

**BEFORE THE INDEPENDENT ETHICS COMMISSION
STATE OF COLORADO**

COMPLAINT NOS. 16-02 & 17-14

In the Matter of

MIKE DUNAFON, Mayor of the City of Glendale, Colorado

**MAYOR DUNAFON’S CONSOLIDATED RESPONSE
TO COMPLAINTS FILED BY M.A.K. INVESTMENT GROUP, LLC**

COMES NOW Respondent Mayor Mike Dunafon, by and through counsel, Brownstein Hyatt Farber Scheck LLP, in consolidated response to Complaint Nos. 16-02 and 17-14 filed with the Independent Ethics Commission (“IEC”) by Complainant M.A.K. Investment Group, LLC, pursuant to IEC Rules 7.J.2 & 7.J.3.¹

INTRODUCTION

Over five years ago, M.A.K. Investment Group, LLC (“M.A.K.”) began filing frivolous ethics complaints against elected officials from the City of Glendale² (“Glendale”). M.A.K. filed two complaints against Mayor Dunafon, as well as two additional complaints against former Councilmember Jeff Allen. The IEC elected to assert jurisdiction over the complaints against Mayor Dunafon.

¹ Mayor Dunafon disputes the IEC’s personal and subject matter jurisdiction over both him and the matters set forth in Complaint Nos. 16-02 and 17-14. This response is filed pursuant to the Colorado Court of Appeals’ holding in *Dunafon v. Jones*, 19CA0321 (March 26, 2020). Mayor Dunafon expressly reserves all rights associated with said appeal, inclusive of future appeals in connection with Complaint Nos. 16-02 and 17-14.

² To be sure, M.A.K. has a remarkable history of bringing frivolous claims against Mayor Dunafon and other Glendale officials as part of a campaign of harassment resulting from disagreements regarding redevelopment plans. This included multiple frivolous lawsuits, *see M.A.K. Investment Group LLC v. The Glendale Urban Renewal Auth.*, 2015CV031086 (Arapahoe County Dist. Ct.) (voluntarily dismissed by M.A.K.); *M.A.K. Investment Group LLC v. The City of Glendale*, 2015CV031460 (Arapahoe County Dist. Ct.) (dismissed pursuant motion filed by Glendale); *M.A.K. Investment Group, LLC v. City of Glendale*, 15-cv-02353-RBJ (D. Colo.) (voluntarily dismissed by joint stipulation); a “shock and awe” march on the Glendale City Hall joined by the “nationally feared paramilitary” and domestic terrorist group, The Oath Keepers, *see Mark Smiley, Rug Merchants Lose All Court Battles*, Glendale Cherry Creek Chronicle (Dec. 22, 2016), *available at* <http://glendalecherrycreek.com/2016/12/rug-merchants-lose-court-battles>; *see also* John Aguilar, *Fight over future of Glendale Persian Rug store heats up*, Denver Post (July 8, 2015); and suspicions that the namesake behind M.A.K., Mohammad Ali Kheirkhahi, was involved in a contrived covert investigatory campaign against Mayor Dunafon that resulted in the jailing of an FBI agent, Trevor Aaronson, *How an Undercover FBI Agent Ended Up in Jail After Pretending to Be a Journalist*, The Intercept (May 16, 2016), *available at* <https://theintercept.com/2017/05/16/how-an-undercover-fbi-agent-ended-up-in-jail-after-pretending-to-be-a-journalist>. Indeed, as relevant to the facts of these complaints, that same undercover FBI agent, Charles Johnson, went directly to the home of Sherry Frame, the Glendale city clerk, on the pretense that he had been “hired to look into an ethics complaint” against Mayor Dunafon. *See id.*

M.A.K.'s complaints center on five meetings of the Glendale City Council between February 2015 and March 2016, at which the City Council heard and voted on public business involving Mayor Dunafon's now-wife, Debbie Matthews, and the wife of Ms. Matthews' son.

To be clear from the outset, across the five meetings identified by M.A.K., Mayor Dunafon only took **one** official action—specifically, he cast a tie-breaking vote at one of those meetings. That vote did not violate any Colorado ethics statutes, and in any event, ultimately did not prove to be the final vote on the subject. That single issue was decided on a re-vote at which Mayor Dunafon played no role. The remaining four meetings at issue in M.A.K.'s complaints involved action taken by the Glendale City Council without any input or participation by Mayor Dunafon.

M.A.K., of course, was well aware of all of this background before filing Complaint Nos. 16-02 and 17-14. Nevertheless, the complaints get basic facts of public record wrong. M.A.K. insinuates and attempts to attribute the worst possible motives to Mayor Dunafon at every turn. In so doing, M.A.K. provides nothing beyond baseless allusions to support its aspersions of wrongdoing. Worse still, M.A.K. relies on statutes that do not support even the most charitable reading of its allegations. In short, the complaints are frivolous and vexatious on their face.

In addition to failing on the merits, M.A.K.'s complaints should not be entertained further, because doing otherwise risks raising troubling policy implications. The crux of M.A.K.'s allegations center on Mayor Dunafon recusing himself out of an abundance of caution from certain matters, as well as a re-vote conducted by the Glendale City Council following a meeting that produced a messy and ambiguous record.

Contrary to M.A.K.'s allegations, both Mayor Dunafon and the City Council acted laudably by using proactive and preventive actions—the sort of err-on-the-side-of-caution approach the IEC generally encourages—to inoculate against any conflict-of-interest concerns. M.A.K. instead attempts to use these actions as indictments of ethical violations. The IEC should encourage prophylactic actions such as these, rather than using them as a foundation for frivolous complaints.

This consolidated response proceeds by first setting forth the relevant factual background associated with the five meetings described in M.A.K.'s complaints, including substantive evidence that M.A.K. conspicuously omitted. Second, this response establishes at least six independent bases on which to dismiss M.A.K.'s complaints. Finally, this response substantively responds to each discrete statement and allegation contained in M.A.K.'s complaints, in the event the IEC does not dismiss both complaints outright.

Mayor Dunafon respectfully requests that the IEC dismiss the spurious allegations raised by M.A.K. in Complaint Nos. 16-02 and 17-14 in their entirety.

FACTUAL BACKGROUND

I. The Smoking Gun Applies for a Preliminary and Final Site Development Plan

A. The Planning Commission Receives and Approves the Smoking Gun Permit, Following Glendale's Ordinary Administrative Procedures.

On or around December 24, 2014, Glendale received a Preliminary and Final Site Development Plan application from The Smoking Gun Land Company LLC for development at 492 South Colorado Boulevard in Glendale, Colorado ("the Smoking Gun Permit"). *See generally* Ex. A (Dec. 24, 2014 Ltr. From D. Visani to C. Line). The land located at this address is owned by the Anthony Marino Family Trust. *See generally* Ex. B (Arapahoe County Parcel Search, 492 S. Colo. Blvd.). The Smoking Gun Permit was placed on the January 13, 2015 agenda for consideration by Glendale's Planning Commission. *See generally* Ex. C (Jan. 13, 2015 Planning Commission Agenda). An analysis and recommendation of the Smoking Gun Permit prepared by staff was included for the Planning Commission's evaluation. *See generally* Ex. D (Jan. 9, 2015 Memo re: Concurrent Preliminary and Final Site Development Plan). The relevant career city planning team recommended approval of the site plan and issuance of the special use permit. *See id.* at 4. The Planning Commission unanimously approved the Smoking Gun Permit. *See* Ex. E (Jan. 13, 2015 Minutes of the Planning Commission).

B. The Smoking Gun Permit is Heard by the Glendale City Council on February 3, 2015, Resulting in its Approval.

Consistent with Glendale's ordinary procedure for hearing applications for site development plans, the Smoking Gun Permit application was placed on the February 3, 2015 agenda of the Glendale City Council. *See* Ex. F at 1 (Feb. 3, 2015 Glendale City Council Agenda). It was heard in open session, during the regular course of business, at the Glendale City Council's February 3, 2015 meeting. *See* Ex. G at 2-3 (Feb. 3, 2015 Minutes of the Glendale City Council). Audio of the City Council meeting was recorded, and records of the meeting were made available online. When the Glendale City Council reached the Smoking Gun Permit agenda item, Mayor Dunafon recused himself out of an abundance of caution and Mayor Pro Tem Paula Bovo presided over that portion of the meeting. *See id.* at 2.

During that meeting, Zoning Administrator Chuck Line presented the Smoking Gun Permit, reviewed the Planning Commission's recommendation, and answered questions posed by councilmembers. *See id.* at 2. A representative of the applicant also appeared before the City Council. *See id.* Following extensive questions, answers, and further explanations regarding the Smoking Gun Permit, a motion was made to approve the Smoking Gun Permit. *See id.* at 3. The motion was made by Councilmember Franssen and seconded by Councilmember Allen. *See id.*

Shortly after the motion was made and seconded, the audio recording of the February 3, 2015 meeting becomes extremely unclear, resulting in significant confusion regarding which councilmembers voted on the Smoking Gun Permit, how each councilmember voted, and the

ultimate outcome of the vote. *See* Ex. H at 7:35:14 PM.³ Initially, the audio of the recording seems to contain three affirmative votes, though without attribution to individual councilmembers. *See id.* A single vote is then cast in opposition, which is problematic considering that six councilmembers were present to vote. *See id.* at 7:35:17 PM. Mayor Pro Tem Bovo is then heard asking, “Did everybody vote?” *Id.* at 7:35:20 PM. Following that question, yet another unnamed councilmember says, “I’ll vote nay.” *See id.* at 7:35:25 PM.

At this point, assuming *arguendo* none of the recorded statements are from councilmembers who had already voted, only five votes had been cast. Then, a voice is simply heard saying, “Aye.” *See id.* at 7:35:26 PM. Again, it is not clear whether this latest vote was one that had already been cast or came from a councilmember who had not yet voted. It then appears that Mayor Pro Temp Bovo herself says, “Aye.” *Id.* at 7:35:27 PM. That statement is followed by an additional series of “ayes” and “nays,” but without any attribution or clarification regarding which of those votes had already been cast. *See id.* at 7:35:28 PM. Following these unclear and indeterminate votes, a voice is heard asking whether an unnamed individual may vote. *See id.* at 7:35:34 PM. This colloquy is then followed with “I’m going to vote nay,” but again, without attribution. *Id.* at 7:35:40 PM. At the end of this ambiguous series of events, Mayor Pro Tem Bovo states that she has “three nays; two ayes.” *Id.* 7:35:45 PM. No councilmember is recorded disagreeing with that statement; and yet all in attendance proceeded on the understanding that the vote had resulted in a tie. Further compounding the manifest vagueness of the audio recording, the minutes of that meeting reflect a tie vote of three in favor and three opposed. *See* Ex. G at 3.

As the audio recording reflects, a dialogue begins between then-City Attorney Matt Giacomini and Mr. Line regarding the circumstances, if any, under which a previously-recused individual may cast a tie-breaking vote before the Glendale City Council. *See* Ex. H at 7:35:57 PM. No councilmember disputed this understanding of a tie vote, either in the audio recording, in the meeting minutes, or in subsequent City Council meetings. An apparent consensus was reached, without Mayor Dunafon’s involvement, that a recused individual may vote to break a tie with disclosure of the reason for the recusal. *See id.* at 7:35:05 PM. Mayor Dunafon is then heard stating, unequivocally, “So there is no ownership on my part in this. I did this [the recusal] as an abundance of caution.” *Id.* at 7:36:18 PM. Mayor Dunafon then voted affirmatively to break the apparent tie in good faith reliance on the legal advice provided in open session. *See* Ex. G at 3.

C. Due to Ambiguities in the Record, the Glendale City Council Revisited the Smoking Gun Permit on March 17, 2015 and Approved the Permit Again.

Because the audio recording of the Glendale City Council’s February 3, 2015 meeting contained extensive ambiguities—and even, arguably, conflicted with the minutes of the meeting—the City Council opted to revisit the matter in a public meeting on March 17, 2015. *See* Ex. I; Ex. J at 1-2 (March 17, 2015 Minutes of the Glendale City Council).

³ The City of Glendale uses For the Record, a commercial solution for digital recordings, to create audio recordings of City Council meetings. The For the Record files, in a proprietary file format, containing the true and correct audio recording referenced here are being provided digitally as exhibits to this response. The easiest method for loading and listening to these files is via the free web player available directly from For the Record, at <https://www.fortherecord.com/products/ftwebplayer>. The times referenced in connection with each audio recording reflect the timestamp of the associated audio, which time is displayed when these recordings are loaded via the web player.

Once again, Mayor Dunafon recused himself at the outset, doing so out of the same abundance of caution and not because of any actual ownership stake or conflict of interest. *See* Ex. J at 1; Ex. K at 7:01:32 PM (Audio Recording of March 17, 2015 City Council Meeting).

City Attorney Jeff Springer then explained the reason for reconsidering the matter: having reviewed the audio recording of the February 3, 2015 meeting, Mr. Springer confirmed that the audio recording did not clearly reflect the votes cast that day, creating a risk of ambiguity. *See id.* at 7:02:00 PM. The City Council had an opportunity to ask further questions of Mr. Springer, but no questions were asked. *See id.* at 7:07:34 PM. All present councilmembers first voted to re-vote the Smoking Gun Permit approval in order to clean up the record. They then voted 5-1 in favor of the Smoking Gun Permit.⁴ *See* Ex. J at 2.

II. Colorado Ethics Watch Files an Ethics Complaint with the Glendale City Council, Which the City Council Unanimously Dismisses as Frivolous Following an Independent Investigation.

Almost one year later, Colorado Ethics Watch, a now-defunct non-profit organization, filed an ethics complaint with the Glendale City Council, against Mayor Dunafon, pursuant to Chapter 2.14 of the Glendale Municipal Code. *See generally* Ex. L (Jan. 29, 2016 Colo. Ethics Watch Letter). The allegations in Colorado Ethics Watch’s complaint were nearly identical to many of those contained in Complaint No. 16-02.

The Colorado Ethics Watch complaint alleged that Mayor Dunafon’s February 3, 2015 tie-breaking vote on the Smoking Gun Permit was improper “due to his wife’s ownership interest in the Smoking Gun,” and further alleged that Mayor Dunafon improperly voted on a consent agenda item unanimously approved at the Glendale City Council’s April 7, 2015 meeting concerning a liquor license for Shotgun Willie’s. *See id.* Colorado Ethics Watch requested that the City Council “hold a public hearing on this complaint, render findings, and adopt a resolution censuring Mayor Dunafon for his conflicted votes.” *Id.* at 2.

In response to the ethics complaint, and consistent with the Glendale Municipal Code, the Glendale City Council investigated the complaint. To ensure impartiality, the City Council retained Nathan D. Chambers, Esq. to perform a third-party investigation of the Colorado Ethics Watch complaint. *See generally* Ex. M (Apr. 29, 2016 Chambers Report). Mr. Chambers performed a comprehensive review, investigation, and analysis of the claims raised, culminating in an extensive report. *See, e.g.,* Ex. N at 4-7 (May 3, 2016 Minutes of the Glendale City Council; *see generally* Ex. M). Mr. Chambers also made an oral presentation of his report to the Glendale City Council in open session. *See* Ex. N at 4-7.

Mr. Chambers’ investigation and report included the following findings:

⁴ One councilmember, Dario Katardzic, was present at the February 3 meeting, but was not present at the March 17 meeting. As explained further below, then-Councilmember Katardzic was traveling internationally at the time, and attempts to reach him and record his vote were unsuccessful. As a result, his vote was recorded as a “nay,” consistent with his vote at the February meeting.

- Mayor Dunafon and Ms. Matthews were not married at the time of either the February 3, 2015 or the March 17, 2015 meetings. *See* Ex. M at 4. This fact is confirmed by public records showing that Mayor Dunafon and Ms. Matthews obtained a marriage license on July 20, 2015 and were married on July 25, 2015. *See* Ex. O (Jefferson County Marriage Record).
- A comprehensive review of financial records revealed that Mayor Dunafon has no ownership or other financial interest in Smoking Gun, either directly or indirectly. *See* Ex. M at 5 (Chambers Report). This included an interview with the CPA who has prepared Mr. Dunafon’s tax returns for over two decades.⁵ *See id.*
- Prior to 2015, Mayor Dunafon and Ms. Matthews filed separate tax returns, even though financial benefits would have accrued to them had they filed joint tax returns. *See id.*
- Ms. Matthews maintains separate bank accounts to which Mayor Dunafon has no access or signing authority. *See id.*
- The CPA, who has extensive familiarity with the relevant financial documents, similarly noted no co-mingling of assets as between Mayor Dunafon and Ms. Matthews. *See id.*

Following the presentation of Mr. Chambers’ report and questioning, the Glendale City Council voted unanimously to dismiss the Colorado Ethics Watch complaint as frivolous.⁶ *See* Ex. N at 6.

In so doing, the City Council found that there was a lack of financial interest between Mayor Dunafon and Ms. Matthews’s businesses, as a factual matter. The City Council also concluded that no “substantial financial interest” existed as a matter of law.

Finally, the Glendale City Council dismissed Colorado Ethics Watch’s allegation concerning the April 7, 2015 Consent Item. The City Council found that, because the Consent Item was passed unanimously, this necessarily meant Mayor Dunafon did not cast a vote. *See id.* at 7; *see also* Charter for the City of Glendale § 4.9(a). In other words, Mayor Dunafon took no action, let alone improper action, at the April meeting.

⁵ M.A.K. misleadingly claims that Glendale City Council minutes from March 2, 2010 establish that Mayor Dunafon had an ownership interest in Shotgun Willie’s. *See* Compl. No. 17-14 at 2. However, a review of the minutes cited reveals that M.A.K. has selectively quoted an instance in which the then-City Attorney “opined,” without substantiation, about possible ownership interests in Shotgun Willie’s. *See* Compl. No. 17-14, Ex. 2 at 1. Furthermore, once this inconclusive prior misstatement was revealed, the Glendale City Council acted promptly to correct it, to ensure an accurate record. *See* Ex. P (Resolution No. 7, Series of 2018).

⁶ Notably, the composition of the City Council that voted on the Colorado Ethics Watch complaint was substantially different than that which voted at the February 3, 2015 and March 17, 2015 meetings: Only two councilmembers serving in February of 2015 were still on the City Council to vote on the Colorado Ethics Watch complaint in May of 2016.

III. In 2015 and 2016, the Glendale City Council Unanimously Passes Various Consent Items, Which Do Not Involve a Mayoral Vote.

Meetings of the Glendale City Council usually include “Consent Items.” *See, e.g.*, Ex. F at 1. These Consent Items are also known as a Consent Agenda or Consent Calendar: They appear at the outset of Regular Meetings of the Glendale City Council and are a widely-recognized method for city councils to dispose of “routine or noncontroversial matters” in a cumulative manner and “without debate or amendment,” so long as all councilmembers consent, as the name implies. Ex. Q at 5 (RONR (11th ed.), p. 361). *See also* Ex. Q-1 (Records of proceedings reflecting adoption of Robert’s Rules of Order). Because Consent Items are passed unanimously by the City Council and do not involve any debate, the Mayor neither votes on them nor participates in any deliberation. *See id.*; Charter for the City of Glendale § 4.9(a) (“The Mayor shall . . . have the right to vote **only** in the case of tie.” (emphasis added)).

For purposes of Complaint Nos. 16-02 and 17-14, M.A.K. takes issue with three such Consent Items, each of which was approved unanimously by the Glendale City Council, a fact admitted by M.A.K. and confirmed by the relevant meeting minutes:

- On April 7, 2015, the Glendale City Council unanimously approved a Consent Item renewing the Tavern Liquor License for Bavarian Inn Restaurant Inc. d/b/a Shotgun Willie’s. *See* Ex. R at 1 (April 7, 2015 Minutes of the Glendale City Council); Compl. No. 16-02 at 3-4.
- On September 1, 2015, the Glendale City Council unanimously approved a Consent Item renewing the Tavern Liquor License for TEM and Company d/b/a T-Bar. *See* Ex. S at 1 (Sept. 1, 2015 Minutes of the Glendale City Council); Compl. No. 16-02 at 4-5.
- On March 1, 2016, the Glendale City Council unanimously approved a Consent Item renewing the Tavern Liquor License for Bavarian Inn Restaurant Inc. d/b/a Shotgun Willie’s. *See* Ex. T at 1-2 (March 1, 2016 Minutes of the Glendale City Council); Compl. No. 17-14 at 2-3.

M.A.K. alleges that Mayor Dunafon violated state ethics statutes at each of these three meetings by casting votes in which he had an undisclosed conflict of interest, notwithstanding that the City Council unanimously approved each Consent Item, without any vote or input from Mayor Dunafon. *See* Compl. No. 16-02 at 3-5; Compl. No. 17-14 at 2-3.

More than six years have passed since the earliest conduct at issue occurred. In that time, both the Glendale City Council and multiple Colorado courts have addressed the matters in dispute here. The City Council deemed the allegations against Mayor Dunafon frivolous; and a Colorado district court agreed that the IEC lacks jurisdiction over Mayor Dunafon, notwithstanding that the matter was remanded for these proceedings on a separate jurisdictional issue. While Mayor Dunafon continues to contest the IEC’s jurisdiction here, he responds to M.A.K.’s substantive allegations below. Mayor Dunafon’s response includes the many factual and legal reasons that IEC should dismiss both complaints against him.

THE IEC LACKS PERSONAL & SUBJECT MATTER JURISDICTION

I. Applicable Legal Standards

The IEC was created by a constitutional amendment adopted by citizen initiative and the jurisdiction granted to it by the electorate was, by design, limited. Specifically, the IEC must dismiss a complaint as frivolous if it does not state a rational legal basis for the IEC's involvement. *See* IEC Rule 7.G. In this context, frivolousness includes "complaints . . . over which the IEC lacks jurisdiction." IEC Rule 3.A.5.

In determining whether the IEC lacks jurisdiction, familiar and standard principles of statutory interpretation apply. The interpreter should give effect to the electorate's intent, which requires "giv[ing] words their ordinary and popular meaning." *Colo. Ethics Watch v. Senate Majority Fund, LLC*, 269 P.3d 1248, 1253-54 (Colo. 2012). Further, the electorate is deemed to have chosen words intentionally and known existing law at the time. *See id.* at 1256. When interpreting constitutional language, it is especially imperative to "consider the amendment as a whole and, when possible, adopt an interpretation of the language which harmonizes different constitutional provisions rather than an interpretation which would create a conflict between such provisions." *Zaner v. City of Brighton*, 917 P.2d 280, 283 (Colo. 1996). Similarly, constitutional interpretations must "favor a construction of a constitutional amendment that will render every word operative, rather than one that may make some words meaningless or nugatory." *Patterson Recall Comm., Inc. v. Patterson*, 209 P.3d 1210, 1215 (Colo. App. 2009).

II. Article XXIX, Section 7 Precludes the IEC from Exercising Jurisdiction.

Article XXIX, Section 7, of the Colorado Constitution 7 contains two sentences. *See* Colo. Const. art. XXIX, § 7. The first sentence permits **any** county or municipality, including home rule, to adopt ethics rules that are more stringent than those contained in Article XXIX. This same sentence also clearly contemplates a rather direct comparison to the specific rules contained in Article XXIX given that it uses the phrase "the provisions contained in this article" when describing the ability of counties and municipalities to enact rules stricter than those in Article XXIX. *Id.*

By contrast, the second sentence provides a jurisdictional carve-out to certain home rule municipalities that have more broadly adopted rules "that address the matters covered by this article." *Id.* This second sentence is surplusage if it means what the first sentence already says: that home rule municipalities may adopt rules at least as strict as those contained in Article XXIX. *See Patterson Recall Comm., Inc.*, 209 P.3d at 1215. Instead, it must mean more. It must mean that home rule municipalities have the latitude to adopt rules that are more, less, or equally strict than those contained in Article XXIX for the carve-out to apply. The deliberately distinct phrasing of "the matters covered by this article," in the second sentence, as against "the provisions contained in this article," in the first sentence, further underscores that the electorate intended to provide latitude to home rule municipalities. Interpreting the statute in this manner is likewise consistent with the broad grant of independent authority afforded to home rule municipalities more generally.

The City of Glendale has met the standard set forth in Section 7 by virtue of its comprehensive ethics laws. Glendale has adopted numerous charter and code provisions that address the ethical conduct of its public officials. These provisions include multiple conflict-of-interest restrictions and gift prohibitions. *See, e.g.*, Glendale Colo. Code §§ 2.14.040(A), 2.14.040(B), 2.14.040(D); Glendale Colo. Charter, Ch. IV, §§ 4.27(c), 9.12. Glendale has also adopted a procedure for receiving, hearing, and adjudicating ethics complaints that is commensurate with its resources as a small, home rule municipality. *See* Glendale Colo. Code §§ 2.14.040(D)-(F). These provisions represent Glendale “adopt[ing] charters, ordinances, or resolutions that address the matters,” i.e., the ethical conduct of public officials, covered by Article XXIX. Colo. Const. art. XXIX, § 7. As such, the IEC lacks jurisdiction over all public employees and elected officials in Glendale.

To the extent further argument is required, in the interest of efficiency, Mayor Dunafon expressly incorporates and relies upon his jurisdictional arguments previously presented to the IEC, as well as those asserted before the courts that heard Mayor Dunafon’s initial appeal. Mayor Dunafon maintains that the IEC lacks both personal and subject matter jurisdiction here and respectfully requests that the IEC revisit its decision in this respect. Otherwise, Mayor Dunafon reserves the right to further appeal or otherwise seek judicial relief on these jurisdictional bases.

M.A.K. HAS NOT PLED ANY COGNIZABLE ALLEGATIONS OF MISCONDUCT

The IEC should dismiss each of M.A.K.’s allegations because they fail on both the facts and the law. M.A.K.’s allegations regarding the Smoking Gun Permit and other City Council meetings fail for multiple, independently dispositive reasons.

I. Applicable Legal Standards

“A complaint shall be dismissed as frivolous by the IEC if the complaint does not allege a rational basis in fact or law for the IEC’s involvement” IEC Rule 7.G. Similarly, under Rule 12(b)(5) of the Colorado Rules of Civil Procedure, dismissal is warranted unless a complaint “states a plausible claim for relief.” *Warne v. Hall*, 373 P.3d 588, 597 (Colo. 2016). Under this standard, claims and allegations do not survive dismissal when they are conclusory, undermined by undisputed facts, or equally consistent with non-tortious conduct. *See id.* at 596. While factual allegations are taken as true in the context of a motion to dismiss, legal conclusions merely couched as factual allegations should be disregarded. *See id.* at 598. Dismissal is likewise required when the facts alleged “cannot, as a matter of law, support the claim for relief.” *N.M. ex rel. Lopez v. Trujillo*, 397 P.3d 370, 373 (Colo. 2017).

In the alternative, the IEC should also grant summary judgment on Complaint Nos. 16-02 and 17-14. Summary judgment is warranted when “there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law.” C.R.C.P. 56(c). issue of material fact is one, the resolution of which will affect the outcome of the case.” *Krane v. Saint Anthony Hosp. Sys.*, 738 P.2d 75, 77 (Colo. App. 1987). In deciding a motion for summary judgment, “favorable inferences” are granted to the nonmoving party. *City of Fort Collins v. Colo. Oil & Gas Assn.*, 369 P.3d 586, 590 (Colo. 2016). However, the nonmoving party “may

not rest upon mere allegations or denials of the opposing party’s pleadings” C.R.C.P. 56(e). The nonmoving party “must set forth specific facts showing that there is a genuine issue for trial.” *Id.* The analysis here applies with equal force under either legal standard.

II. Mayor Dunafon Had No Personal, Private, or Substantial Financial Interest in the Permits and Licenses at Issue in Complaint Nos. 16-02 and 17-14.

Complaint Nos. 16-02 and 17-14 require the IEC to analyze Mayor Dunafon’s conduct under the Colorado Code of Ethics.⁷ Specifically, M.A.K. alleges violations of Colo. Rev. Stat. § 24-18-109(3)(a), which prohibits actions where an official has “a personal or private interest,” and Colo. Rev. Stat. § 24-18-108(2)(d), which prohibits actions where an official “has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.” *See, e.g.,* Compl. No. 16-02 at 2.⁸ As explained below, no facts indicate that Mayor Dunafon’s tie-breaking vote on February 3, 2015 violated either standard of conduct.⁹

A. Personal or Private Interest

M.A.K. alleges that Mayor Dunafon violated the Colorado Code of Ethics by voting on matters in which he had a “personal or private interest.” *See* Colo. Rev. Stat. § 24-18-109(3)(a). The full text of the statute provides:

A member of the governing body of a local government who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.

Id.

Neither Section 24-18-109 specifically, nor the Colorado Code of Ethics more broadly, define the term “personal or private interest.” *See generally* Colo. Rev. Stat. § 24-18-101 *et seq.* However, the ordinary meaning of the terms “personal” and “private” are informative. Black’s Law Dictionary defines “personal” as “[o]f or affecting a person” or “[o]f or constituting

⁷ Mayor Dunafon does not concede that the statutes cited in Complaint Nos. 16-02 and 17-14 displace controlling law enacted by the City of Glendale as a home rule municipality. *See* Glendale Colo. Code § 2.14. The arguments presented here are subject to this caveat and do not constitute a waiver.

⁸ M.A.K.’s citations to these statutes in Complaint No. 16-02 contain numerous typographical errors. However, it is apparent that these are the standards at issue in the complaint. *See, e.g.,* Ex. U (Jan. 30, 2017 Ltr. from R. Kemp to K. Dumler).

⁹ Two dispositive facts require reiteration here: First, Mayor Dunafon did not cast **any** vote at the March 17, 2015 meeting of the Glendale City Council. *See generally* Ex. J. As such, there is no cognizable complaint against him in connection with that meeting. Second, Mayor Dunafon did not vote on **any** of the consent agenda items described across Complaint Nos. 16-02 and 17-14 given that they passed unanimously and Mayor Dunafon may only vote when a tie exists. Accordingly, M.A.K. cannot maintain any complaint against Mayor Dunafon concerning these consent agenda items. As such, this discussion section focuses on the conduct of the February 3, 2015 meeting; but, in the alternative, the rationale set forth above applies with equal force to the balance of M.A.K.’s allegations against Mayor Dunafon.

personal property.” *See Personal*, Black’s Law Dictionary (11th ed. 2019). “Private” means “[o]f, relating to, or involving an individual, as opposed to the public or the government.” *See Private*, Black’s Law Dictionary (11th ed. 2019). Thus, “personal or private interest” must mean matters affecting an official’s own direct and individualized personal interests.

The IEC also may look to other instructive resources in defining what constitutes a “personal or private interest”. One such resource is Rule 41 of the Colorado Senate Rules.¹⁰ As with the Colorado Code of Ethics, Rule 41 limits voting upon matters in which Senators have a “personal or private interest.” *See* Rule 41(b).

Rule 41 goes further than the Colorado Code of Ethics in that it prescribes what qualifies as such an interest. *See* Rule 41(b)(2). As pertinent here, Rule 41 confirms that a public official does not suffer a conflict of interest when the matter implicates (a) a non-spousal relationship and (b) the official has no other substantial economic interest, either directly or indirectly. *See* Rule 41(a)(2) (defining “close relative” as “the spouse of the Senator and the following natural, adoptive, and adopted members of the Senator’s or spouse’s family: Mother, father, children, brothers, and sisters.”), (b)(2) (defining conflicts of interest, including “personal or private interests”).

Other state ethics statutes, using similar or identical statutory language, carry similar understandings of conflict-of-interest principles. *See, e.g.*, Del. Code. Ann. tit. 29. 10, §§ 1002(a), 1004(1) (defining circumstances where legislators should not vote on matters in which they have a “personal or private interest” and defining “close relative” as “a person’s parents, spouse, children (natural or adopted) and siblings of the whole and half-blood.”); Ala. Const. art. IV, § 82 (prohibiting legislators from voting on matters in which they have “a personal or private interest”) & *Opinion of the Justices No. 317*, 474 So.2d 700, 703–04 (Ala. 1985) (concluding “the phrase ‘personal or private interest’ in Section 82 means an interest affecting the legislator individually or as a member of a small group.”).

Undersigned counsel has not located any IEC guidance or precedent that is precisely on point to the facts raised here, i.e., a public official accused of a conflict of interest solely by virtue of a non-marital relationship to an individual with an ownership interest in a certain business, especially where the public official does not intermingle their finances or otherwise share resources.

Although there is a lack of squarely applicable precedent, the IEC has previously considered the nature of qualifying personal or private interests in other fact patterns. Those decisions tend to suggest that the IEC views conflicts of interest consistent with the plain language of the term personal or private interest consistent with the resources described above. For example:

- In Advisory Opinion 16-05, the IEC considered whether a Trustee of the town of Pitkin, Colorado had a personal or private interest—and thus, a conflict of interest—given that the Trustee owned a property management company that

¹⁰ The Colorado Senate Rules are available at [https://www.leg.state.co.us/CLICS/cslFrontPages.nsf/FileAttachVw/2020Rules/\\$File/2020CombinedRules.pdf](https://www.leg.state.co.us/CLICS/cslFrontPages.nsf/FileAttachVw/2020Rules/$File/2020CombinedRules.pdf).

managed short-term rentals in Pitkin. *See* Ex. V at 1-3 (Advisory Op. 16-05). The IEC found that direct ownership of a business that would benefit from certain local government decisions affecting short-term rentals “is substantial” such that the Trustee “should refrain from voting” on such matters “when doing so would economically benefit her business.” *Id.* at 3.

- In the IEC’s Findings of Fact and Conclusions of Law for Complaint No. 17-31, the IEC evaluated, *inter alia*, whether a Trustee of the town of Williamsburg, Colorado voted on a matter in which he had a personal or private interest—and thus, a conflict of interest—when he voted in favor of retaining his wife as town clerk. *See* Ex. W at 1 (Findings and Conclusions, Compl. 17-31). The IEC found that the Trustee had a personal or private interest in the retention of his wife given that (1) the couple were married and had been married for thirty-five years; and (2) the couple had combined finances. *See id.* at 7. However, the IEC also specifically stated that the “relationship alone,” a long-standing marriage, was sufficient to demonstrate a personal or private interest. Thus, a spousal relationship qualifies under the statute, consistent with the interpretive aids discussed previously.
- When the IEC adjudicated Complaint No. 18-08, it found that a County Commissioner inappropriately voted on a matter in which she had a person or private interest when she failed to recuse herself from a consent agenda item in which she both voted to approve and received reimbursement for previously incurred legal fees. *See* Ex. X at 3-4 (Findings and Conclusions, Compl. 18-08). Notably, County Commissioners cast votes on all matters pending before the Commission, including consent agenda items.

These opinions share a common thread. In each instance, a qualifying personal or private interest was only found to exist when a public official either had an individualized economic interest or if a close relative had such an interest. These opinions are consistent with the plain meaning of the statutory text, as well as applicable interpretive aids. By contrast, economic interests of non-spouse relationships and more attenuated familial relationships, especially those that do not carry any indirect financial interest (such as co-mingled assets) do not qualify.

B. Substantial Financial Interest

While neither complaint contains specific allegations regarding Colo. Rev. Stat. § 24-18-108(2)(d), M.A.K. vaguely and indirectly suggests that “C.R.S. 28-18-108(d) is also implicated by the actions of Mayor Dunafon raised in this Complaint.” Compl. No. 16-02 at 2; Compl. No. 17-14 at 3. The statute referenced does not exist.¹¹

Nevertheless, in an effort to avoid allegations by ambush, Mayor Dunafon also addresses the legal standard set forth in Colo. Rev. Stat. § 24-18-108(2)(d), which provides that a public officer shall not “[p]erform an official act directly and substantially affecting to its economic

¹¹ A prior letter from M.A.K.’s counsel correcting other statutory typographical errors did not purported to correct the statutory reference in the sentence quoted above. *See* Ex. U.

benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.” Colo. Rev. Stat. § 24-18-108(2)(d).¹²

Neither of M.A.K.’s complaints suggest that Mayor Dunafon “is engaged as counsel, consultant, representative, or agent” for any of the named business entities. *Id.* As such, if any allegation is to be made, it must be premised solely on the allegation that Mayor Dunafon had a “substantial financial interest” in the matters at issue.

The term “substantial financial interest” is contained in the definitional section of Colorado’s Code of Ethics. *See Colo. Rev. Stat. § 24-18-102.* Specifically, subsection (4) limits “financial interest” to “a substantial interest held by an individual” that meets any of the following six conditions: (a) “An ownership interest in a business;” (b) “A creditor interest in an insolvent business;” (c) “An employment or a prospective employment for which negotiations have begun;” (d) “An ownership interest in real or personal property;” (e) “A loan or other debtor interest; or” (f) “A directorship or officership in a business.” Colo. Rev. Stat. § 24-18-102(4)(a)-(f); *cf. Ex. Y* at 3 (Findings and Conclusions, Compl. 11-03) (utilizing Colo. Rev. Stat. § 24-18-102(4) to define “substantial financial interest” in Colo. Rev. Stat. § 24-18-109(2)(b)).

C. Analysis

As set forth in the preceding two subsections, M.A.K. must allege facts sufficient to state a plausible or rational allegation that Mayor Dunafon cast a vote, without disclosure, on a matter in which he either has a “personal or private interest” or a “substantial financial interest.” The plain facts and uncontested evidence discussed throughout demonstrate that neither statute can support the meager, legally conclusory, and outright false allegations contained in Complaint Nos. 16-02 and 17-14.

A personal or private interest requires either a direct, substantial, and personal interest in a matter under consideration or a similar interest held by a “close relative,” which generally includes spouses and children. Neither condition is met here.

As already stated throughout, and as Mayor Dunafon explicitly stated at the February 3, 2015 meeting—the only meeting at which Mayor Dunafon actually cast **any** vote—Mayor Dunafon has **no ownership** in any of Ms. Matthews’ businesses or the real property on which they operate. *See Ex. H* at 7:36:18 PM. Furthermore, Mayor Dunafon and Ms. Matthews were not married at the time of either the February 3, 2015 or March 17, 2015 City Council meetings. *See Ex. Q.* Thus, Ms. Matthews did not qualify as a “close relative” at the time of either meeting.¹³ Nothing in M.A.K.’s complaints rebuts or undercuts these clear and demonstrable facts. As such, the IEC must conclude that M.A.K.’s complaints are frivolous and should be dismissed.

¹² Chapter 2.14.040(B) of Glendale’s home rule City Charter, which controls Mayor Dunafon’s conduct here, contains very similar language. *See Glendale Colo. Code § 2.14.040(B).*

¹³ As already discussed, the undisputed record shows that every Consent Item at issue in M.A.K.’s complaints passed the City Council unanimously and without debate—which is required of a Consent Item, by definition. Therefore, Mayor Dunafon necessarily did not vote on any of those items given his role as Mayor exclusively limits his voting to the breaking of ties. *See Charter for the City of Glendale § 4.9(a).* He likewise did not participate in deliberations given that none take place, also by definition.

Similarly, no portion of M.A.K.'s complaints can be read to show a plausible or rational allegation that Mayor Dunafon had a "substantial financial interest" in the February 3, 2015 vote on the Smoking Gun Permit. No party disputes that Mayor Dunafon does not meet most of the preconditions for a cognizable financial interest under Colo. Rev. Stat. § 24-18-102(4): he is not a creditor, employee, debtor, director, or officer of any business controlled by Ms. Matthews. *See* Colo. Rev. Stat. §§ 24-18-102(4)(b), (c), (e), (f). That leaves only the prospect of either a direct ownership interest in Smoking Gun as a business or a direct ownership interest in the land on which Smoking Gun sits as the remaining bases on which to allege a violation here. *See* Colo. Rev. Stat. §§ 24-18-102(4)(a), (d).

Mayor Dunafon has no ownership in the land on which Smoking Gun sits. That land is owned by the Anthony Marino Family Trust. *See* Colo. Rev. Stat. § 24-18-102(4)(d); Ex. B. This fact was discussed at the February 3, 2015 City Council meeting, something M.A.K. conspicuously ignores; and M.A.K. has not alleged that Mayor Dunafon has any interest in that trust. *See, e.g.*, Ex. G at 2.

Likewise, M.A.K. never once alleges that Mayor Dunafon has a direct ownership interest in Smoking Gun as a business. M.A.K. cannot so allege because Mayor Dunafon has no ownership interest, direct or indirect, a fact he also made explicit at the February 3, 2015 meeting. *See* Ex. H at 7:36:18 PM. A thorough review by Mayor Dunafon's CPA likewise confirmed no financial or ownership interest, as well as no financial intermingling. *See* Ex. M at 5.

The sum total of M.A.K.'s allegations thus depend entirely on Mayor Dunafon's relationship to Ms. Matthews. However, a non-spouse relationship does not qualify as a close relative and is not, in and of itself, sufficient to qualify as a substantial financial interest under the statute. *See supra*, pp. 10-12. As such, M.A.K.'s allegations under Colo. Rev. Stat. § 24-18-108(2)(d) completely fail and ought to be dismissed.

Through whatever lens the IEC views M.A.K.'s allegations, the IEC must dispose of Complaint Nos. 16-02 and 17-14.

Both complaints fail on the facts: Mayor Dunafon has no ownership or economic interest, directly or indirectly, in the Smoking Gun or Ms. Matthews' other businesses; Mayor Dunafon and Ms. Matthews did not marry until July 2015; and Mayor Dunafon undeniably cast no vote and thus took no official action at any of the meetings mentioned in M.A.K.'s complaints except for the February 3, 2015 meeting.

Both complaints fail on the law: Mayor Dunafon did not have a personal or private interest in the Smoking Gun Permit; Mayor Dunafon did not have a substantial financial interest in the Smoking Gun Permit; and Ms. Matthews was not a close relative when the City Council voted on the Smoking Gun Permit.

And both complaints fail as a matter of policy, too, given that they seek to deprecate precautionary measures intended to protect the public trust. As such, Mayor Dunafon

respectfully requests that the IEC dismiss both complaints against him or otherwise render judgment in his favor.

III. Mayor Dunafon Did Not Attempt to Influence the Decisions of Councilmembers Regarding the Agenda Items at Issue in Complaint Nos. 16-02 and 17-14.

Under Colo. Rev. Stat. § 24-18-109(3)(a), when a local government official has a personal or private interest in a pending matter, that official must “refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.” Colo. Rev. Stat. § 24-18-109(3)(a).

As already explained, Mayor Dunafon did not have a personal or private interest in the Smoking Gun Permit. *See supra*, pp. 10-15. On this basis alone, Colo. Rev. Stat. § 24-18-109(3)(a) does not apply as having a personal or private interest is a necessary predicate for the influence provision to apply.

Moreover, M.A.K. has not made any specific allegations that Mayor Dunafon attempted to influence the decisions of any councilmembers. Again, that failure alone should lead to dismissal of M.A.K.’s claims.

Nevertheless, out of an abundance of caution, Mayor Dunafon addresses the statute here given M.A.K.’s ambiguous statement that the City Council’s vote on March 17, 2015 “deserves the closest scrutiny.”¹⁴ *See* Compl. 16-02 at 3.

There is no evidence to suggest any effort by Mayor Dunafon to influence the votes of any councilmembers with respect to the Smoking Gun Permit. In fact, nothing in the written minutes of the February 3, 2015 and March 17, 2015 meetings show any participation by Mayor Dunafon whatsoever, other than his single tie-breaking vote on a matter that was later re-voted without his participation. To the extent the audio of those meetings indicates anything, it only shows Mayor Dunafon’s efforts to avoid any appearance of impropriety.

This leaves M.A.K. relying on reading improper intent into how the City Council voted on the Smoking Gun Permit at its March 17, 2015 meeting. However, the change appears due instead to two innocuous reasons.

First, the City Council’s February 3, 2015 deliberation of the Smoking Gun Permit contained significant discussion regarding a prior site use application submitted for the same location by Starbucks Corporation. *See, e.g.,* Ex. G at 2. While the record does not state as much specifically, it seems that at least some councilmembers would have preferred to see a Starbucks

¹⁴ Mayor Dunafon, merely presided over the March 17, 2015 meeting, as he was required to do. *See* Charter for the City of Glendale § 4.9(a) (“The Mayor **shall** preside over meetings of the Council . . .” (emphasis added)). *See also* *People v. Dist. Court, Sec. Jud. Dist.*, 713 P.2d 918, 921 (Colo. 1986) (“The generally accepted and familiar meanings of both ‘shall’ and ‘require’ indicate that these terms are mandatory.”). The same is true of the three meetings at which Consent Items were considered: the very nature of a Consent Item requires no deliberation or debate, which means Mayor Dunafon could not have influenced the City Council’s unanimous approvals of each Consent Item.

drive-through located at 492 South Colorado Boulevard, instead of a recreational marijuana dispensary.

However, the City Council was not faced with a choice between the two businesses. As also discussed during the same meeting, the application originally submitted by Starbucks never came to fruition. This meant that developing a Starbucks at that location was not an available option for the City Council to consider.¹⁵ See Ex. G at 2 (explaining that prior Starbucks site plan application “never followed through on obtaining a cross-access agreement with the adjacent property owner, which access was a major component of the site plan.”). Thus, if any of the votes against the Smoking Gun Permit on February 3, 2015 were intended to voice disappointment at the lack of a Starbucks at the site under consideration, those feelings may well have dissipated by March 17, 2015.

Second, and perhaps more important, the decision to grant the Smoking Gun Permit was a quasi-judicial decision that the City Council can only deny for non-arbitrary reasons.¹⁶ As such, the Glendale City Council was required to reasonably apply preexisting criteria to the decision whether to grant the Smoking Gun permit. An abuse of that discretion would be subject to reversal by a court. Cf. *Snyder v. City of Lakewood*, 542 P.2d 371, 376 (Colo. 1975) (“The determination of whether the Council reasonably applied the statutory criteria in exercising its statutory power to rezone involves a consideration of whether the Council abused its discretion or exceeded the bounds of its jurisdiction and is properly resolved in a certiorari proceeding under Rule 106(a)(4).”).

In other words, idiosyncratic preferences notwithstanding, the City Council could not arbitrarily deny the Smoking Gun Permit if it otherwise complied with Glendale’s preexisting criteria. See generally Glendale Municipal Code, Chapter 17.32. And the Planning Commission had already concluded that the Smoking Gun Permit did comply with those preexisting criteria. See generally Ex. D (concluding the Smoking Gun Permit complied with all required criteria for approval).

It is therefore highly likely that councilmembers who originally voted against approving the Smoking Gun Permit changed their votes at the March 17, 2015 meeting in recognition of this legal restriction on their ability to act in a quasi-judicial capacity.

Regardless, absent clear and specific evidence to the contrary, which M.A.K. lacks, the IEC must presume that the Glendale City Council fulfilled its obligations in good faith compliance with Glendale’s Municipal Code. See *Pub. Utils. Comm’n v. Dist. Court In & For Arapahoe Cty.*, 431 P.2d 773, 776-77 (1967) (restating the presumption that official acts of

¹⁵ Starbucks Corporation has since opened a location very near to the Smoking Gun site, but on a much larger lot and with more favorable traffic patterns.

¹⁶ The adoption of a development plan by a city council and pursuant to established legislative criteria represents the exercise of a quasi-judicial function. See *Cherry Hills Resort Dev. Co. v. City of Cherry Hills Vill.*, 757 P.2d 622, 628 (Colo. 1988). See also Glendale Municipal Code, Chapter 17.32 (containing specific processes and prerequisites to the grant of a site development plan permit). “Quasi-judicial action . . . generally involves a determination of the rights, duties, or obligations of specific individuals on the basis of the application of presently existing legal standards or policy considerations to past or present facts developed at a hearing conducted for the purpose of resolving the particular interests in question.” *Id.* at 625.

public officers are presumed to have been properly discharged absent “clear evidence to the contrary”); *Warne v. Hall*, 373 P.3d 588, 596 (Colo. 2016) (requiring dismissal when allegations are equally consistent with non-tortious conduct). M.A.K. provides nothing to overcome this presumption of good faith.

Thus, the IEC should dispose of M.A.K.’s barren and spurious allegations regarding councilmembers’ specific votes. M.A.K. has not made any allegations with particularity; any statements the IEC might charitably construe as allegations are equally consistent with the City Council’s good-faith discharge of its duties; and the Smoking Gun Permit was the necessary exercise of a quasi-judicial function.

IV. Mayor Dunafon Did Not Violate the Public Trust, and to Imply Otherwise Would Undercut Important Public Policy Considerations.

M.A.K.’s complaints also broadly point to Colo. Rev. Stat. § 24-18-103(1), which states as follows:

The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, members of the general assembly, local government officials, and employees. A public officer, member of the general assembly, local government official, or employee shall carry out his duties for the benefit of the people of the state.

Colo. Rev. Stat. § 24-18-103(1). A breach of the public trust happens when a public official engages in the conduct set out in Colorado’s Code of Ethics.¹⁷ *See* Colo. Rev. Stat. § 24-18-109(1) (“Proof beyond a reasonable doubt of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty and the public trust.”). *See also* Ex. Z (Findings and Conclusions, Compl. 17-25) at 4 (“Violation of any act enumerated in section 24-18-109, C.R.S. constitutes a breach of the public trust.”); *Gessler v. Smith*, 419 P.3d 964, 972 (Colo. 2018).

The types of conduct that constitute violations of the public trust in this context have already been addressed above. *See supra* p. 17. M.A.K.’s conclusory allegations are wholly without merit, and Mayor Dunafon expressly incorporates those responses here. *See* Ex. X at 5 (acknowledging that Colo. Rev. Stat. §§ 24-18-109(3)(a) and 24-18-103 are duplicative when applied to the same underlying conduct).

In addition to the undisputed facts that dispose of M.A.K.’s baseless allegations, an important policy consideration further counsels against allowing M.A.K.’s complaints to proceed further. Complaint Nos. 16-02 and 17-14 nakedly insinuate nefarious intent from the precautionary measures that were taken by Mayor Dunafon and the Glendale City Council precisely to avoid any appearance of a conflict of interest or other impropriety. If M.A.K.’s complaints are allowed to proceed, it leaves public officials in a no-win situation and will

¹⁷ M.A.K. has specifically disclaimed that Complaint Nos. 16-02 or 17-14 allege any violations of Article XXIX. *See* Compl. No. 16-02 at 5 and Compl. No. 17-14 at 3-4.

dissuade those in similar positions from taking proactive and preventive steps, lest they later be construed as incriminating admissions.

Mayor Dunafon takes his ethics obligations seriously. He usually recuses himself from matters involving Ms. Matthews and her businesses precisely to avoid any allegations of impropriety and to forestall any accusations regarding his public role relative to her separate, and private, business interests. During the February 3, 2015 meeting, a highly unusual (and confusing) tie vote occurred. Mayor Dunafon only cast the tie breaking vote after receiving, and in good faith relying on, legal advice contemporaneously provided by the City Attorney. *See Ex. H* at 7:35:57 PM (2/3/15 audio); *see also* Charter for the City of Glendale § 4.9(a). Under M.A.K.'s interpretation of the facts, future officials should never undertake precautionary recusals lest they later be viewed as tacit admissions of a conflict where none exists.

Further, the Glendale City Council revisited its vote on the Smoking Gun Permit due to an entirely incomprehensible audio record. *See supra*, pp. 3-5. Undertaking this re-vote was not a “do-over,” as M.A.K. claims; it was a responsible and appropriate step to ensure that the City Council maintained a clear and unequivocal record of official action it took as a body. Here, too, such an approach is laudable. Instead, by entertaining M.A.K.'s complaints, the IEC will set the precedent that public bodies should not revisit prior business in an effort to clarify the record or to ensure appropriate action is taken.

V. The February 3, 2015 and March 17, 2015 Permit Decisions Were Quasi-Judicial Decisions the Glendale City Council Could Only Deny for Non-Arbitrary Reasons.

As previously stated, the Glendale City Council's consideration of the Smoking Gun Permit constituted exercise of a quasi-judicial function. *See supra*, pp. 16-17. Given that approval of the Smoking Gun Permit constituted a quasi-judicial action, the City Council was limited in its ability to deny the Permit. The arguments and analysis already stated apply with equal force and are expressly incorporated here. *See id.* Because the Glendale City Council and—in the context of a single tie-breaking vote, Mayor Dunafon—were required to approve the Smoking Gun Permit, which fully complied with the Glendale Municipal Code governing site development plans, no violation has occurred.

VI. Mayor Dunafon Took No Action at the March 17, 2015 Meeting Such That No Cognizable Claim Exists Against Him.

Mayor Dunafon does not control actions taken by the Glendale City Council as a body. To that end, the record is clear that Mayor Dunafon cast no vote at the City Council's March 17, 2015 meeting. *See Ex. J* at 1-2. As such, M.A.K. has failed to plead any actionable claim against Mayor Dunafon in connection with that meeting. For this reason, as well those already stated previously, the IEC should dismiss all claims against Mayor Dunafon pertaining to the March 17, 2015 meeting.

VII. All of M.A.K.'s Allegations Regarding Consent Items Fail Outright Because the Mayor of Glendale Never Votes on Consent Items.

When considering whether to dismiss a complaint, the adjudicatory body should not assume the veracity of allegations in the complaint “when the facts alleged . . . run counter to facts of which the court can take judicial notice.” *Walker v. Van Laningham*, 148 P.3d 391, 394 (Colo. App. 2006). Similarly, it is not appropriate to assume as true “legal conclusions that are couched as factual allegations.” *Denver Post Corp. v. Ritter*, 255 P.3d 1083, 1088 (Colo. 2011). Here, the IEC should dismiss all claims and allegations pertaining to the Consent Items considered by the Glendale City Council because they fail to state any rational or plausible claim of a violation.

M.A.K. makes conclusory allegations regarding three Consent Items that the Glendale City Council unanimously approved in each instance:

- M.A.K. alleges, without support, that Mayor Dunafon “voted with the unanimous City Council” on April 7, 2015 to approve a consent item associated with a tavern liquor license for the Bavarian Inn Restaurant Incorporated. Compl. 16-02 at 3-4.
- M.A.K. alleges, without support, that Mayor Dunafon “voted with the unanimous City Council” on September 1, 2015 to approve a consent item associated with a tavern liquor license for TEM and Company. Compl. 16-02 at 4.
- M.A.K., likely realizing the legal and factual shortcomings of its prior complaint, ambiguously alleges that, on March 1, 2016, Mayor Dunafon “presumably presided over the Consent Agenda” and states that “the Consent Agenda ‘passed unanimously,’” which agenda included a consent item associated with a tavern liquor license for the Bavarian Inn Restaurant Incorporated. Compl. 17-14 at 2.

In each instance above, M.A.K.'s bare allegations fail both in fact and in law. Indeed, with respect to the March 2016 consent item above, M.A.K.'s complaint does not even actually allege that Mayor Dunafon cast a vote in connection with the agenda item at issue. As explained below, the IEC should dismiss each allegation pertaining to a Consent Item.

The Charter for the City of Glendale is unequivocal: the Mayor of Glendale **only** votes if a tie exists among the City Council. *See* Charter for the City of Glendale § 4.9(a) (“The Mayor shall preside over meetings of the Council, have the power to administer oaths and affirmations, and have the right to vote **only in case of tie.**” (emphasis added)). In other words, it is definitionally impossible for Mayor Dunafon to have voted on any of the Consent Items at issue here given that each passed unanimously.¹⁸

¹⁸ Moreover, Robert’s Rules of Order further confirm that Mayor Dunafon could not have voted on or participated in the consideration of unanimously approved consent items: “Consent Calendar. Legislatures, city, town, or county councils, or other assemblies which have a heavy work load including a large number of routine or noncontroversial matters may find a consent calendar a useful tool for disposing of such items of business. . . . This calendar is called over periodically at a point established in the agenda by special rule of order, at least preceding standing committee reports. . . . **The special rule of order establishing a consent calendar may provide that, when the matters on**

This conclusion is confirmed in two additional ways: First, in each instance, M.A.K. expressly concedes that the Consent Items passed the City Council unanimously. *See* Compl. 16-02 at 4 (admitting that the April 7, 2015 consent item passed “the unanimous City Council” and that the September 1, 2015 consent item passed “the unanimous City Council”); Compl. 17-14 at 2 (admitting that the March 1, 2016 consent item “passed unanimously”).

Second, the publicly available minutes of each of the above-mentioned meetings confirm that the City Council unanimously approved each Consent Item at issue, further confirming that M.A.K.’s allegations are facially impossible. *See* Ex. R at 1; Ex. S at 1; Ex. T at 1-2. It is beyond dispute that no Mayor of Glendale casts any vote on a matter before the City Council unless a tie exists, and nothing in the minutes related to these meetings reflects that these votes were treated any differently.

On this basis, M.A.K. has failed to state any rational or plausible cause of action regarding the consent items. M.A.K.’s own conclusory allegations do not withstand even the slightest scrutiny, either on their own or as against the City Council’s own agendas and minutes. Therefore, the IEC should dismiss all allegations made by M.A.K. in connection with the Consent Items, including most of the claims stated in Complaint 16-02 and the entirety of Complaint 17-14.

FURTHER FACTUAL RESPONSES

I. Factual Responses Regarding Complaint No. 16-02

Mayor Mike Dunafon is a voting member of the City Council of Glendale, Colorado.

1. Denied. As already explained, the Charter for the City of Glendale, Colorado is unequivocal: “The Mayor shall preside over meetings of the Council, have the power to administer oaths and affirmations, and have the right to vote **only in case of tie.**” Charter for the City of Glendale § 4.9(a) (emphasis added). Thus, Mayor Dunafon is not an ordinary or regular voting member; his role is largely ceremonial and his authority to vote is explicitly circumscribed.

This Complaint relates to Mayor Dunafon’s actions as a voting member of the City Council.

2. This is a conclusory statement to which no response is necessary or possible except to reiterate, as stated immediately above, that Mayor Dunafon is not “a voting member of the City Council.” *See* Charter for the City of Glendale § 4.9(a).

Ethics Watch has filed an ethics complaint with the City of Glendale alleging some (but not all) of the allegations in this Complaint.

the calendar are called up, they may be considered in gross or without debate or amendment.” Ex. Q at 5 (emphasis added). This provision of rules confirms that which the Glendale City Council’s agendas and minutes already show: consent agenda items are passed unanimously, if at all, and without any vote or other participation by Mayor Dunafon. *See* Ex. Q-1 (Records of proceedings reflecting adoption of Robert’s Rules of Order).

3. Mayor Dunafon admits that Colorado Ethics Watch, a now-defunct organization, filed an ethical complaint directly with the Glendale City Council containing substantially identical allegations to M.A.K.'s Complaint No. 16-02. The IEC does not sit as an appellate body over the Glendale City Council. Utilizing Complaint No. 16-02 to take a second bite at the apple was *per se* improper. Furthermore, how the Glendale City Council adjudicated the prior Ethics Watch complaint should have no bearing on the IEC's determination here. Neither complaint filed by M.A.K. contains **any** allegations pertaining to the adjudication of the Colorado Ethics Watch complaint.

A copy of the Ethics Watch complaint is attached as Exhibit 1.

4. Mayor Dunafon admits that Exhibit 1 to Complaint 16-02 is a letter from Luis Toro, Director of the now-defunct Colorado Ethics Watch, to the Mayor Pro Tem Bovo concerning business items considered by the Glendale City Council on February 3, 2015 and April 7, 2015.

We incorporate in this Complaint by reference the allegations made by Ethics Watch.

5. Mayor Dunafon denies this ambiguous allegation and any further allegations that M.A.K. attempts to shoehorn here.

It is widely reported that Mayor Dunafon is married to Debbie Matthews, and that Matthews owns the business in Glendale known as Shotgun Willie's.

6. Mayor Dunafon denies the broadly inaccurate statements and misleading innuendo made in Complaint No. 16-02 regarding his relationship to Ms. Matthews and Ms. Matthews' ownership of Shotgun Willie's. According to publicly available records that M.A.K. could have consulted prior to filing this baseless complaint, Mayor Dunafon and Ms. Matthews did not obtain a marriage license until July 20, 2015 and were not formally married until July 25, 2015. *See* Ex. Q. Thus, while Mayor Dunafon and Ms. Matthews were married by the time M.A.K. began filing frivolous complaints against Mayor Dunafon, they were not married at the time of the February 3, 2015 and March 17, 2015 meetings. Furthermore, it is an inaccurate oversimplification to state that Ms. Matthews "owns" Shotgun Willie's. *See, e.g.,* Ex. G at 2; Ex. M at 5.

Matthews also is an owner of the business in Glendale known as Smoking Gun and of an entity she describes as "Coal Creek".

7. Mayor Dunafon expressly references, incorporates, and repeats the response stated immediately above.

According to the Arapahoe County Assessor's records, Coal Creek Partners LLC owns the real property in Glendale in which the Shotgun Willie's business operates.

8. In making this allegation, M.A.K. engaged in a deliberate sleight-of-hand in an attempt to maintain frivolous claims against Mayor Dunafon. M.A.K.'s allegations focus on the Smoking Gun Permit and business, which is separate and distinct from Shotgun Willie's, a different business operating on a different parcel of land. Further, the Arapahoe County

Assessor's Records, which M.A.K. purports to have consulted prior to filing this complaint, unequivocally shows that the land on which Smoking Gun sits is owned by a wholly unrelated entity, the Anthony Marino Family Trust. *See* Ex. B; Ex. G at 2. In other words, the property on which Shotgun Willie's sits is separate from the property on which Smoking Gun sits; and the Smoking Gun land is not owned by either Ms. Matthew or Coal Creek Partners LLC. Furthermore, while M.A.K. relies on citation to a January 21, 2016 Westword article in Complaint No. 16-02 regarding Mayor Dunafon and Ms. Matthew's marriage,¹⁹ M.A.K. conspicuously ignores that the very same article unequivocally states that Mayor Dunafon "doesn't actually own any of the Smokin' Gun" P. Calhoun, *First Look at the Smokin' Gun, Colorado's Next Major Marijuana Tourist Attraction*, Westword (Jan. 21, 2016), available at <https://www.westword.com/news/first-look-at-the-smokin-gun-colorados-next-major-marijuana-tourist-attraction-7524497> (last accessed Feb. 6, 2021).

The February 3 Minutes reflect that Mayor Dunafon initially recused himself from the public hearing and vote on a Concurrent and Final Site Development Plan and Special Use Permit for Smoking Gun.

9. Mayor Dunafon agrees that the February 3, 2015 Minutes show Mayor Dunafon recusing himself from the public hearing on the Smoking Gun Final Site Development Plan and Special Use Permit. Ex. G at 2. The audio recording of that meeting also reflects Mayor Dunafon explicitly stating that "there is no ownership on my part in this" and that he recused himself "as an abundance of caution." Ex. H at 7:36:18 PM. The IEC should not penalize public officials who prophylactically recuse themselves by construing a preventative and non-mandatory recusal as an admission of a conflict of interest.

The Site Development Plan and Special Use Permit requested by Matthew's [sic] business was defeated on a vote of 3-3, with Council Members Katardzic, Giglio and Rigoni voting against the approval on a roll call vote.

10. It is inaccurate to claim that the permit requested at the February 3, 2015 meeting "was defeated" on the basis of a purported tie among councilmembers. Assuming *arguendo* that the motion failed, the same permit could be reconsidered at a later time. In other words, the motion was defeated, not the permit application. Mayor Dunafon otherwise does not dispute that a 3-3 vote initially occurred, with the councilmembers noted voting as described, at least based on the content of the February 3, 2015 Minutes. Ex. G at 3. However, Mayor Dunafon does dispute that a roll call vote occurred and further reiterates the manifest confusion present in the audio recording of the February 3, 2015 vote on the Smoking Gun Permit. *See supra*, pp. 3-4. Indeed, this muddled record prompted the Glendale City Council to revisit the matter at a later meeting.

Mayor Dunafon then returned to the meeting in his official capacity, explained the reason for his recusal (not reflected in the February 3 Minutes), and cast his vote to approve the Site Development Plan and Special Use Permit for his wife's business.

¹⁹ The Westword article on which M.A.K. relies was published on January 21, 2016, after the date of their marriage. As already stated, Mayor Dunafon and Ms. Matthews were not married at the time of the February 3 and March 17 votes described in Complaint No. 16-02. *See* Ex. Q.

11. Mayor Dunafon returned to the meeting in his official capacity following the apparent conclusion that a tie vote existed. With respect to his prior recusal, Mayor Dunafon stated: “So there is no ownership on my part in this. I did this as an abundance of caution.” Ex. H at 7:36:18 PM. Furthermore, Mayor Dunafon only undertook to cast the tie-breaking vote following on-the-record legal advice. *See id.* at 7:35:57 PM. Additionally, Ms. Matthews was not Mayor Dunafon’s wife on February 3, 2015. *See Ex. O.*

As a result of Mayor Dunafon’s vote, the Site Development Plan and Special Use Permit passed by a vote of 4-3.

12. Mayor Dunafon agrees that the February 3, 2015 Minutes reflect passage of the motion following a tie-breaking vote pursuant to § 4.9(a) of the Charter for the City of Glendale and in reliance on advice provided by city officials at the February 3, 2015 meeting. *See Ex. G at 3.*

Approximately one-half of the second page of Complaint No. 16-02 quotes from or otherwise cites to various Colorado statutes. Rather than address each sentence separately, for efficiency, they are addressed altogether here.

13. For each of these three paragraphs discussing Colorado statutes, Mayor Dunafon states that he disputes the applicability of the statutes cited. Given that these statements otherwise constitute legal conclusions, no further response is required. To the extent a further response is required, Mayor Dunafon denies all statements in this portion of the complaint.

In this case, there is no record of any disclosure by Mayor Dunafon to the Secretary of State.

14. M.A.K. does not specify which records are referred to, rendering a complete response impossible. Mayor Dunafon therefore lacks information or belief on which to respond. However, to the extent further response is required, Mayor Dunafon reiterates that no conflict of interest existed on February 3, 2015.

Furthermore, Mayor Dunafon’s participation in the vote was not necessary for a quorum or for the City Council to act.

15. Mayor Dunafon agrees that a quorum was present at the February 3, 2015 meeting. Mayor Dunafon otherwise denies the remainder of this allegation as calling for legal conclusions. Further, the Glendale Charter clearly states that the “Mayor shall . . . have the right to vote only in case of tie.” Charter for the City of Glendale § 4.9(a).

In fact, prior to the Mayor’s rescission of his recusal, the City Council had acted—denying the approval requested by his wife’s business on a vote of 3-3.

16. Mayor Dunafon denies that the Glendale City Council had acted by casting a tie vote and incorporates his prior responses regarding denial of the motion rather than denial of the permit. The Glendale Charter clearly requires that the Mayor vote in the case of a tie. *See* Charter for the City of Glendale § 4.9(a). This provision would be meaningless if mayors were intended to take no action in the face of a tie vote.

The City Council revisited the Smoking Gun vote on March 17.

17. The use of “revisited” is ambiguous. However, Mayor Dunafon does agree that the Glendale City Council voted on the Smoking Gun Permit at its March 17, 2015 meeting.

The Agenda (“March 17 Agenda”) and Minutes of the March 17, 2015 meeting (“March 17 Minutes”), attached respectively as Exhibit 3 and Exhibit 4, reflect that the meeting was called for one purpose only: to attempt a “do-over” of the February 3 vote.

18. Mayor Dunafon unequivocally denies the misleading and inappropriate description and innuendo contained in this allegation. First, the March 17, 2015 meeting was a Regular Meeting, as the agenda makes clear. *See Ex. I* at 1. Second, the March 17, 2015 meeting contained all of the same ordinary agenda items present on other Regular Meeting agendas, including but not limited to multiple public comment periods, agenda approval, and the pledge of allegiance. *See generally Ex. I* at 1. Third, the Glendale City Council usually has two meetings per month, though some months only have one meeting: the City Council had two regular meetings in March, consistent with this practice. Finally and most importantly, M.A.K. attempts to allude to some improper purpose for the meeting without acknowledging that a full, additional Regular Meeting of the Glendale City Council occurred one week earlier, which contributed to the reduced number of agenda items under consideration at the March 17, 2015 meeting.

Mayor Dunafon opened the meeting and was present for the sole purpose, it appears, to recuse himself again from the matter.

19. Here again, M.A.K. engages in wholly inappropriate allusions and aspersions. The Glendale Charter specifically states that presiding over City Council meetings is a mandatory function of the Mayor’s office: “The Mayor **shall preside** over meetings of the Council[.]” Charter for the City of Glendale § 4.9(a) (emphasis added). Mayor Dunafon denies the mischaracterizations and misstatements in this allegation.

After incorrect legal analysis of the official action at the February 3 meeting, the City Council first voted unanimously to revote the issue, then voted 5-1 in favor of the same Site Development Plan and Special Use Permit previously denied, then approved, on February 3.

20. While M.A.K. makes no effort to elaborate on what constituted “incorrect legal analysis,” this allegation on its face further explains the nature of the actions taken at the February 3, 2015 and March 17, 2015 meetings: both the Glendale City Council and Mayor Dunafon justifiably relied on advice provided at the meeting in making the procedural determinations at issue here. In any event, even if M.A.K. had made a more substantive allegation, M.A.K.’s legal interpretation is not subject to response given it is *per se* a legal conclusion. Mayor Dunafon states that the City Council unanimously voted to “Consider Eliminating Any Ambiguity on a Vote Taken at the February 3, 2015 City Council Meeting to Approve the Concurrent and Final Site Development Plan and Special Use Permit, With Staff Conditions, for Smoking Gun, 492 South Colorado Blvd.” Ex. J. Mayor Dunafon further states that the City Council voted 5-1 “to Approve the Concurrent and Final Site Development Plan and Special Use Permit, With Staff Conditions, for Smoking Gun, 492 South Colorado Blvd.” *Id.*

Importantly, **Mayor Dunafon did not participate in this vote**, and M.A.K. does not allege otherwise.

Notably, two Council Members changed their votes during the intervening weeks: Council Members Rigoni and Giglio.

21. Mayor Dunafon agrees that Councilmembers Rigoni and Giglio voted in favor of the permit at the March 17, 2015 meeting. *See Ex. J* at 2. Mayor Dunafon has no information on which to admit or deny the rationale for any particular councilmember's vote. To the extent a further response is required, Mayor Dunafon denies the remainder of this allegation.

Council Member Katardzic, who was not present, had his vote registered as "No", on advice of the City Attorney.

22. Mayor Dunafon agrees that Councilmember Katardzic's vote was registered as opposed to the motion to approve the Smoking Gun Permit at the March 17, 2015 meeting given his absence at the meeting. Mayor Dunafon has no information on which to admit or deny the rationale for any particular councilmember's vote.

It appears from discussion in the minutes that Council Member Katardzic had not received notice of the meeting, which may not be surprising since the March 17 Agenda indicates it was prepared barely 24 hours before the meeting, and Council Member Katardzic was (according to the extraordinary discussion in the March 17 Minutes of attempts to contact him) travelling abroad when the March 17 meeting was noticed and held.

23. M.A.K. again engages in unsupported and wholly inappropriate mischaracterizations and innuendo concerning the conduct of the March 17, 2015 meeting. There exist occasions where meetings are scheduled and held with less advance preparation and notice than other meetings. In every such instance, so long as the body convening the meeting complies with relevant rules and procedures, there is nothing untoward about holding a properly noticed and open-to-the-public meeting. Furthermore, M.A.K. portrays attempts to contact and include a sitting councilmember as though it is an indictment of the City Council's conduct. The opposite is true. Indeed, following M.A.K.'s logic here would disincentivize making efforts to include a sitting councilmember when public business requires consideration while a legislator is out of town. Mayor Dunafon agrees that Councilmember Katardzic was not present at the meeting and that the meeting minutes include a discussion of attempts to contact Councilmember Katardzic. Mayor Dunafon denies the myriad mischaracterizations otherwise made.

A review of the Minutes of all City Council meetings for calendar year 2015 indicates that the Concurrent and Final Site Development Plan and Special Use Permit for Smoking Gun is the only matter considered by the City Council in 2015 for which any "No" vote was registered by any City Council Member.

24. Mayor Dunafon reiterates here that site development plans and special use permits are quasi-judicial determinations that require approval assuming compliance with pre-established legislative criteria absent non-arbitrary reasons to the contrary. *See supra*, pp. 16-17. Assuming *arguendo* this statement is true, it underscores the quasi-judicial nature of such approvals.

After the initial denial on a tie vote of 3-3, and the passage of several weeks, all City Council Members present and voting at the “do-over” meeting of March 17 voted “Yes”.

25. While Mayor Dunafon rejects M.A.K.’s characterizations of the February 3, 2015 vote as a “denial” and the March 17, 2015 meeting as a “do-over” meeting,” Mayor Dunafon agrees that the Smoking Gun Permit passed by a vote of 5-1 on March 17, 2015, including affirmative votes from the five councilmembers present.

In addition to the Mayor’s improper official act on February 3, this remarkable turn-about on a matter involving a business owned by the Mayor’s wife deserves the closest scrutiny.

26. Mayor Dunafon not only denies M.A.K.’s ambiguous and unfounded allegations of impropriety, Mayor Dunafon further asserts that M.A.K. has made no specific allegation or pleading of misconduct within the ambit of the IEC’s jurisdiction. Alternatively, were there conduct warranting investigation, it is beyond dispute that Mayor Dunafon cast no vote at the March 17, 2015 meeting. Two Councilmembers’ votes changed between the February 3 and March 17 meeting, nothing else. As such, were there a cognizable set of facts appropriate for investigation by the IEC (and there is not, both on the merits and because the IEC lacks jurisdiction over the City of Glendale and its officials), any such complaint should have been brought against individuals who voted on the permit at issue. Mayor Dunafon is not the appropriate party against whom to file a complaint if M.A.K. has concerns about how councilmembers voted on March 17, 2015.

Minutes of the Regular Meeting of the City Council of Glendale, Colorado, April 7, 2015 are attached as Exhibit 5 (“April 7 Minutes”).

27. Mayor Dunafon agrees that M.A.K. appears to have attached a copy of the Glendale City Council’s April 7, 2015 meeting minutes as Exhibit 5 to its complaint.

Consent agenda item h is the renewal of the Tavern Liquor License for Bavarian Inn Restaurant Incorporated d/b/a Shotgun Willies, 490 South Colorado Boulevard.

28. Mayor Dunafon agrees that item (h) on the City Council’s April 7, 2015 consent agenda concerned renewal of a tavern liquor license for Shotgun Willie’s.

Shotgun Willie’s, as noted above, is owned by Mayor Dunafon’s wife, Debbie Matthews.

29. Mayor Dunafon incorporates his prior responses here concerning ownership of Shotgun Willie’s and his July 2015 marriage to Ms. Matthews.

Shotgun Willie’s is a trademark and tradename for Bavarian Inn Restaurant Incorporated (see attached Exhibit 6).

30. Mayor Dunafon agrees that M.A.K. has attached a document as Exhibit 6 to its complaint that appears to have been filed with the Colorado Secretary State on August 20, 2012. Otherwise, M.A.K.’s statement here calls for legal conclusions; and the document otherwise speaks for itself.

As reflected in the April 7 Minutes, Mayor Dunafon was present at and presided over the meeting, and voted with the unanimous City Council to approve the consent agenda, including the renewal of the liquor license for his wife's business.

31. Mayor Dunafon agrees that he was present at and presided over the Glendale City Council's April 7, 2015 meeting. Mayor Dunafon categorically denies the remainder of this allegation as demonstrably false. First, the Glendale Charter is unequivocal in that the Mayor votes **only** in case of a tie. *See* Charter for the City of Glendale § 4.9(a). Both the meetings on which M.A.K. relies and M.A.K.'s own allegations show that consent item (h) passed unanimously. *See* Ex. R at 1; Compl. No. 16-02 at 3-4. Because no tie existed, Mayor Dunafon could not have voted on that agenda item, and indeed, did not do so. *Cf.* Ex. X at 3-4 (holding that a regular voting member of a county legislative body voted on a consent agenda item by not recusing herself from such a matter on which she would ordinarily vote, even if by acclamation). Second, as stated previously, Mayor Dunafon and Ms. Matthews were not married at the time of the April 7, 2015 meeting; and Mayor Dunafon has no ownership interest in Shotgun Willie's, either directly or indirectly. *See supra*, pp. 4-6.

There is again no record of any disclosure by Mayor Dunafon to the Secretary of State.

32. M.A.K. does not specify which records are referred to, rendering a complete response impossible. Mayor Dunafon therefore lacks information or belief on which to respond. However, to the extent further response is required, Mayor Dunafon reiterates that no conflict of interest existed on April 7, 2015.

The same prohibitions Mayor Dunafon violated when he cast his vote for Smoking Gun apply to this vote for Shotgun Willie's.

33. This allegation calls for legal conclusions such that no response is required. However, Mayor Dunafon denies this allegation in all respects for the reasons already stated.

Minutes of the Regular Meeting of the City Council of Glendale, Colorado, September 1, 2015 are attached as Exhibit 7 ("September 1 Minutes").

34. Mayor Dunafon admits that Exhibit 7 to Complaint 16-02 appears to be a copy of the Glendale City Council's September 1, 2015 meeting minutes.

Consent agenda item d is the renewal of the Tavern Liquor License for TEM and Company d/b/a T-Bar, 490 South Colorado Blvd. #101.

35. Mayor Dunafon agrees that item (d) on the City Council's September 1, 2015 consent agenda concerned renewal of a tavern liquor license for TEM and Company d/b/a T-Bar.

T-Bar operates in the same building as Shotgun Willie's and advertises itself as "adjacent to Shotgun Willie's" and at the same address of 490 S. Colorado Blvd.

36. Mayor Dunafon responds that the characterization of T-Bar and Shotgun Willie's as operating "in the same building" is ambiguous and incapable of response. However, Mayor

Dunafon agrees that T-Bar appears to have advertised itself as “adjacent to Shotgun Willie’s” and otherwise appears to do business at the same address as Shotgun Willie’s.

T-Bar is financially related to Mayor Dunafon’s wife, as occupant and presumably tenant for property owned by the Mayor’s wife’s entity, Coal Creek Partners LLC, and as participant with the Mayor’s wife’s business, Shotgun Willie’s, in a common consumption area.

37. Mayor Dunafon lacks information and belief to address any arms-length commercial relationship between T-Bar, Shotgun Willie’s, and/or Coal Creek Partners LLC. Mayor Dunafon otherwise reiterates his prior responses and denies the remainder of this allegation.

Furthermore, Lindsey Mintz is Mayor Dunafon’s daughter-in-law, as reflected in the Minutes of the Regular Meeting of the City Council of Glendale, Colorado, October 7, 2014 are attached as Exhibit 8 [sic] (“October 7, 2014”).

38. Councilmember Mintz is the spouse of Ms. Matthews’ adult child from a prior relationship. This attenuated relationship is not actionable here, notwithstanding that Mayor Dunafon does not vote on unanimous Consent Items. *Id.*

The October 7, 2014 Minutes reflect that Mayor Dunafon recused himself at that time from participation in a vote involving Ms. Mintz and T-Bar based on the personal relationship.

39. The October 7, 2014 minutes on which M.A.K. rely speak for themselves. Mayor Dunafon otherwise incorporates his responses immediately above and further states that the conduct of the October 7, 2014 meeting is not at issue here.

As reflected in the September 1 Minutes, Mayor Dunafon was present at and presided over the September 1 meeting, and voted with the unanimous City Council to approve the consent agenda, including the renewal of the liquor license for T-Bar, owned by his daughter-in-law and financially related to his wife’s business interests.

40. Mayor Dunafon references and expressly incorporates here his prior responses regarding Consent Items and unanimous votes: Because the Consent Item passed unanimously, Mayor Dunafon explicitly could not have cast a vote pursuant to § 4.9(a) of the Glendale Municipal Charter, and indeed, did not do so.

There is again no record of any disclosure by Mayor Dunafon to the Secretary of State.

41. M.A.K. does not specify which records are referred to, rendering a complete response impossible. Mayor Dunafon therefore lacks information or belief on which to respond. However, to the extent further response is required, Mayor Dunafon reiterates that no conflict of interest existed and that he cast no vote.

The same prohibitions Mayor Dunafon violated when he cast his vote for Smoking Gun and Shotgun Willie’s apply to this vote for T-Bar.

42. Mayor Dunafon reiterates his prior responses here regarding his relationship to Ms. Matthew and Councilmember Mintz, as well as the definitional impossibility of Mayor Dunafon casting a vote or deliberating on a matter that passes the City Council unanimously and without debate.

M.A.K. makes various statements regarding the remedies they request and the scope of the allegations made. Rather than address each statement individually, Mayor Dunafon addresses them altogether here.

43. Mayor Dunafon agrees that M.A.K. has not alleged any conduct implicating Article XXIX of the Colorado Constitution. Beyond this, the statutes cited speak for themselves and call for legal conclusions. Mayor Dunafon denies that any remedy is warranted given no ethical violation has occurred.

II. Factual Responses Regarding Complaint No. 17-14

Mayor Mike Dunafon is a voting member of the City Council of Glendale, Colorado.

1. Denied. As already explained, the Charter for the City of Glendale, Colorado is unequivocal: “The Mayor shall preside over meetings of the Council, have the power to administer oaths and affirmations, and have the right to vote **only in case of tie.**” Charter for the City of Glendale § 4.9(a) (emphasis added). Thus, Mayor Dunafon is not an ordinary or regular voting member; his role is largely ceremonial and his authority to vote is explicitly circumscribed.

This Complaint relates to Mayor Dunafon’s actions as a voting member of the City Council.

2. This is a conclusory statement to which no response is necessary or possible except to reiterate, as stated immediately above, that Mayor Dunafon is not “a voting member of the City Council.” See Charter for the City of Glendale § 4.9(a).

It is widely reported that Mayor Dunafon is married to Debbie Matthews, and that Matthews is an owner of the business in Glendale known as Shotgun Willie’s.

3. Mayor Dunafon denies the broadly inaccurate statements and misleading innuendo made in Complaint No. 17-14 regarding his relationship to Ms. Matthews and Ms. Matthews’ ownership of Shotgun Willie’s. According to publicly available records that M.A.K. could have consulted prior to filing this baseless complaint, Mayor Dunafon and Ms. Matthews did not obtain a marriage license until July 20, 2015 and were not formally married until July 25, 2018. See Ex. Q. Thus, while Mayor Dunafon and Ms. Matthews were married by the time M.A.K. began filing frivolous complaints against Mayor Dunafon, they were not married at the time of the February 3, 2015 and March 17, 2015 meetings. Furthermore, it is an inaccurate oversimplification to state that Ms. Matthews “owns” Shotgun Willie’s. See, e.g., Ex. G at 2; Ex. M at 5.

Matthews also is an owner of the business in Glendale known as Smoking Gun and of an entity she describes as “Coal Creek”.

4. Mayor Dunafon expressly references, incorporates, and repeats the response stated immediately above.

According to the Arapahoe County Assessor's records, Coal Creek Partners LLC owns the real property in Glendale on which the Shotgun Willie's business operates.

5. Mayor Dunafon agrees that the Arapahoe County Assessor's records, which speak for themselves, appear to show Coal Creek Partners LLC as owner of the property on which Shotgun Willie's operates.

The minutes of the Regular Meeting of the City Council of Glendale, Colorado, March 2, 2010, attached as Exhibit 2 ("March 2010 Minutes"), reflect that Mayor Dunafon (then a council member and Mayor Pro Tem) and another member of the City Council, Jeff Allen, recused themselves on a vote to renew the liquor license for Bavarian Inn Restaurant, Inc. dba Shotgun Willie's because, according to the city attorney, "each have an ownership interest in the licensee". The licensee is Shotgun Willie's.

6. M.A.K. misleadingly claims that Glendale City Council minutes from March 2, 2010 conclusively establish that Mayor Dunafon previously had an ownership interest in Shotgun Willie's. *See* Compl. No. 17-14 at 2. However, a review of the minutes cited reveals that M.A.K. has selectively quoted an instance in which the then-City Attorney "opined," without substantiation, about possible ownership interests in Shotgun Willie's. *See* Compl. No. 17-14, Ex. 2 at 1. Furthermore, once this misstatement in prior minutes was revealed, the Glendale City Council acted promptly to correct it, to ensure an accurate record. *See* Ex. P.

The pattern of Mayor Dunafon not voting on matters involving Shotgun Willie's continued.

7. This allegation is too ambiguous to warrant a response. However, as mentioned previously, Mayor Dunafon repeats that he often would proactively recuse himself from such matters out of an abundance of caution and not because of an actual conflict of interest.

The minutes of the Regular Meeting of the City Council of Glendale, Colorado, March 1, 2011, attached as Exhibit 3 ("March 2011 Minutes"), indicate that Dunafon "did not vote" on the renewal of the Shotgun Willie's liquor license.

8. Mayor Dunafon disputes the relevance of this allegation. Mayor Dunafon otherwise agrees that the March 1, 2011 minutes show that he did not cast a vote on the matter described. Mayor Dunafon further states that those same minutes include the following, which M.A.K. omits: "Mayor Pro Tem Dunafon stated for the record that he does not work for Bavarian Inn Restaurant and does not own property in the City of Glendale other than his condominium."

The minutes of the Regular Meeting of the City Council of Glendale, Colorado, November 1, 2011, attached as Exhibit 4 ("November 2011 Minutes"), reflect that Dunafon was absent from the meeting from a vote regarding eminent domain proceedings for the site of Shotgun Willie's.

9. Mayor Dunafon agrees that the minutes of the November 1, 2011 meeting reflect his absence. Mayor Dunafon categorically denies the insinuations in this allegation.

Minutes of the Regular Meeting of the City Council of Glendale, Colorado, March 1, 2016 are attached as Exhibit 5 (“March 2016 Minutes”).

10. Mayor Dunafon agrees that M.A.K. appears to have attached a copy of the Glendale City Council’s November 1, 2011 meeting minutes as Exhibit 5 to its complaint.

Consent agenda item d is the renewal of the Tavern Liquor License for Bavarian Inn Restaurant Incorporated d/b/a Shotgun Willies [sic], 490 South Colorado Boulevard.

11. Mayor Dunafon agrees that Consent Agenda Item (d) is a renewal of the tavern liquor license described. Mayor Dunafon otherwise reincorporates here his prior statements regarding the nature of Consent Items before the Glendale City Council.

On information and belief, Shotgun Willie’s, as noted above, is owned by Mayor Dunafon’s wife, Debbie Matthews, and, unless his interest owned in 2010 was sold, by Mayor Dunafon.

12. Mayor Dunafon reincorporates here his prior responses regarding his relationship to Ms. Matthews, his lack of any ownership interest in Shotgun Willie’s or Coal Creek Partners LLC, and the Resolution subsequently passed by the Glendale City Council correcting the March 2010 minutes referenced.

Shotgun Willie’s is a trademark and tradename for Bavarian Inn Restaurant Incorporated (see attached Exhibit 6).

13. Mayor Dunafon agrees that M.A.K. has attached a document as Exhibit 6 to its complaint that appears to have been filed with the Colorado Secretary State on August 20, 2012. Otherwise, M.A.K.’s statement here calls for legal conclusions; and the document otherwise speaks for itself.

As reflected in the March 2016 Minutes, Mayor Dunafon was present at and presided over the meeting.

14. Mayor Dunafon agrees that his role as Mayor includes presiding over meetings of the Glendale City Council, including the March 1, 2016 meeting.

There is no indication in the minutes of any disclosure, recusal or abstention for the Consent Agenda.

15. Mayor Dunafon reiterates his prior statements here regarding how the Glendale City Council approves Consent Items on its agenda, including that no mayor casts any vote on any Consent Item given that Consent Items require unanimous approval, without debate.

Mayor Dunafon presumably presided over the Consent Agenda, and the Consent Agenda “passed unanimously,” including the renewal of the liquor license for Shotgun Willie’s.

16. M.A.K.'s presumptions are categorically false. Mayor Dunafon references and incorporates the response immediately above.

The remaining one-and-one-half pages of Complaint No. 17-14 contain citations to and discussions of various statutory provisions and remedies sought. Mayor Dunafon addresses these statements altogether herein.

17. Mayor Dunafon agrees that M.A.K. has not alleged any conduct implicating Article XXIX of the Colorado Constitution. Beyond this, the statutes cited speak for themselves and call for legal conclusions. Mayor Dunafon denies that any remedy is warranted given no ethical violation has occurred. To the extent this portion of Complaint No. 17-14 repeats allegations or insinuations, Mayor Dunafon repeats his corresponding responses. To the extent any further response is required, Mayor Dunafon denies M.A.K.'s allegations and denies that any remedy is warranted as no violation has occurred.

CONCLUSION

For the reasons set forth above, M.A.K. has failed to plead any actionable ethical conduct, let alone conduct within the jurisdiction of the IEC. On whichever bases the IEC chooses to act, Mayor Dunafon implores the IEC to dispose of M.A.K.'s baseless, conclusory, and demonstrably false allegations and legal conclusions. The IEC should dismiss both Complaint Nos. 16-02 and 17-14.

RELIEF REQUESTED

WHEREFORE, for the reasons set forth above, Mayor Dunafon seeks:

- (a) Dismissal of all claims in Complaint Nos. 16-02 and 17-14;
- (b) Consideration of the arguments, analysis, exhibits, and public records set forth above, should further proceedings occur; and
- (c) Any other appropriate relief.

To the best of Mayor Dunafon's knowledge, information, and belief, the statements set forth in this response are true.

Respectfully submitted this 15th day of February, 2021

BROWNSTEIN HYATT FARBER SCHRECK, LLP

/s/ Joshua A. Weiss

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Denver, CO 80202
303-223-1100
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CERTIFICATE OF SERVICE

I hereby certify that on February 15, 2021 I electronically submitted via email the foregoing **MAYOR DUNAFON'S CONSOLIDATED RESPONSE TO COMPLAINTS FILED BY M.A.K. INVESTMENT GROUP, LLC** to the following:

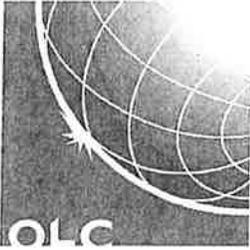
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rkemp@irelandstapleton.com

/s/ Joshua A. Weiss
Joshua A. Weiss

EXHIBIT A

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

December 24, 2014 Letter from D. Visani to C. Line



Dec 24, 2014

**OHLSON LAVOIE
COLLABORATIVE**

616 E SPEER BLVD
DENVER, COLORADO
80203-4213

T: 303.294.9244

F: 303.294.9440

www.olcdesigns.com

Chuck Line
Zoning Administrator
City of Glendale
950 South Birch Street
Glendale, CO 80246
T: (303) 639-4601
cline@glendale.co.us

Re: Preliminary and Final Site Development Plan Application
For: For The Smoking Gun
492 S Colorado Blvd
Glendale, Colorado 80246

Dear Chuck,

I am submitting this application on behalf of the applicant, The Smoking Gun Land Company LLC, for the development of a new structure on 492 South Colorado Boulevard in Glendale, Colorado. We are seeking concurrent review pursuant to Article 17.32.030, Preliminary Site Plan Development and 17.32.050, Final Dimensioned Site Development Plan (PFSDP), of the City of Glendale Zoning Code, please find the following required documentation:

1. One 24 x 36 set of the PFSDP plans
2. One 11x17 set of the same (a PDF of these will be sent via email, separately)
3. Check in the amount of \$2,500 for Planning Review Fees
4. Application Information (below)

We are respectfully submitting these documents for inclusion in the next Planning Commission's agenda.

Please contact me at 303.887.0152 or via email (dvisani@olcdesigns.com) if you have any questions.

Sincerely,

OHLSON LAVOIE COLLABORATIVE
Architecture | Aquatics | Interiors | Technology

Donaldo H. Visani, AIA
Senior Principal

Attachments

ARCHITECTURE
AQUATICS
INTERIORS
TECHNOLOGY

Application Information:

Project Basics:

The project consists of a new structure to replace the existing building on 492 S Colorado Boulevard, which has been recently demolished due to the improvements on to the intersection at Virginia Avenue and Colorado Boulevard. The proposed structure and associated site improvements is proposed to be built on 492 S Colorado Boulevard

The property is currently zoned "Regional Retail and Commercial PUD" and is within the "Eating and Entertainment Overlay" as detailed in the City of Glendale Zoning Code. For further project information, please see the attached drawings, specific point-by-point response to zoning code article requirements and our responses to written staff comments.

Attached Drawings:

Sheet Number	Sheet Name	Comments
SDP - 1/12	COVER SHEET	Cover
SDP - 2/12	LAND PLAT SURVEY	Updated Survey
SDP - 3/12	EXISTING CONDITIONS	Existing Survey
SDP - 4/12	CIVIL SITE PLAN	Civil
SDP - 5/12	UTILITY PLAN	Civil
SDP - 6/12	GRADING PLAN	Civil
SDP - 7/12	BASEMENT PLAN	Architectural (Reference)
SDP - 8/12	FIRST FLOOR PLAN	Architectural (Reference)
SDP - 9/12	ELEVATIONS	Architectural (Reference)
SDP - 10/12	ELEVATIONS	Architectural (Reference)
SDP - 11/12	LANDSCAPE PLAN	Landscape
SDP - 12/13	PHOTOMETRIC PLAN	Electrical

Specific Responses to Article 17.32.030 (Preliminary Site Plan Development):

- A. The location and name of the proposed development;
Location: 492 S Colorado Blvd, Glendale, CO
Name: The Smoking Gun
- B. The names, addresses and phone numbers of the landowners, developers and designers of the development;

Landowner: Anthony Marino Family Trust
Contact: Robert J. Bruce, Esq.
Lawlis & Bruce, LLC
1875 Lawrence Street, Suite 750
Denver, Colorado 80202
(303) 573-5498 phone
(303) 573-5537 fax
robertbruce@lawlisbruce.com

Developer: The Smoking Gun Land Company LLC (and Leasor)
Contact: Deborah A. Matthews, Manager
490 South Colorado Boulevard

Glendale, CO 80246
(303) 916-6707
debbie@westernwines.net

Designers: Ohlson Lavoie Collaborative
Contact: Donaldo H. Visani, AIA, Architect
616 E Speer Blvd
Denver, CO 80203
(303) 294-9244
dvisani@olcdesigns.com

- C. Information regarding the physical characteristics of the surrounding area and the developments within three hundred (300) feet of all property boundary lines;
See submitted drawings
- D. The size of the proposed development site and the character, and approximate location and density of all residential and nonresidential structures including the actual shape, proportion and dimensions of the site to be built upon, the size, shape, height and location of all buildings or other structures to be erected, altered or moved and of any building or other structure on the property;
See submitted drawings.
- E. Existing land uses, pedestrian amenities, ingress and egress points, and landscaping within at least three hundred (300) feet of all property boundary lines;
See submitted drawings.
- F. Adjacent streets and proposed points of access;
See submitted drawings.
- G. The existing topographic character of the land and existing natural features;
See submitted drawings.
- H. The property lines and names of adjoining properties;
See submitted drawings.
- I. Location and descriptions of any existing utilities, easements, leases, common ownership or other encumbrances on the property;
See submitted drawings.
- J. Existing and proposed land use and the approximate location, height, massing and scale of proposed buildings and structures in relationship to the structures on abutting lots;
See submitted drawings.
The property is within the Regional Retail and Commercial PUD (Eating and Entertainment Overlay). The existing and proposed land use is the same: Dining and Drinking Establishment (w/ dancing and entertainment). Maximum height will be at or under 45' for walls or structures and 55' to ridgelines.
- K. The approximate location, number of spaces, and internal circulation of parking areas or structures and indication as to whether the applicant is interested in reducing the minimum parking requirements through the use of transportation demand management techniques;
See submitted drawings
- L. Signed agreement to pay all development review costs;
To be provided by Developer.
- M. North arrow and graphic scale;
See submitted drawings.
- N. A general indication of the expected schedule of development indicating:
 - 1. The approximate date when construction of the project can be expected to begin,
April 15, 2015

2. The stages in which the project will be built;
Construction 04/15/15 - 11/15/15
Virginia Improvements TBD

- O. Documentation showing how all general design and development standards will be met, including street edge treatment, pedestrian amenities, compatibility in site design with abutting uses, open space, usable open space, and parking;
See submitted drawings
- P. Documentation confirming that the applicant has legally sufficient interest in the property proposed for development, or is the duly appointed agent of such a person;
NA or previously submitted
- Q. Minutes and description of notice for the neighborhood meeting or a written waiver by the Zoning Administrator.
By others

Specific Responses to Article 17.32.050 (Final Dimensioned Site Plan):

- A. The final anticipated topography of the area involved;
See submitted drawings.
- B. The existing and intended uses of all buildings and structures;
See submitted drawings.
The property is within the Regional Retail and Commercial PUD (Eating and Entertainment Overlay). The existing and proposed land use is the same: Dining and Drinking Establishment (w/ dancing and entertainment). Maximum height will be at or under 45' for walls or structures and 55' to ridgelines.
- C. The dimensions of all improvements including but not limited to: structures, yards, open spaces, pedestrian amenities, circulation patterns both vehicular and non-vehicular;
See submitted drawings.
- D. Final building elevations and their relationship to abutting properties;
See submitted drawings.
- E. A traffic plan and study showing the
1. location of all parking and loading areas or structures,
See submitted drawings.
 2. along with the number of spaces,
See submitted drawings.
 3. circulation patterns both vehicular and non vehicular,
See submitted drawings.
Development standards include: AASHTO Green Book - A Policy on Geometric Design of Highways and Streets, 6th Edition, 2011 and the City of Glendale Zoning Code.
 4. traffic impact report,
Traffic patterns are expected to remain unchanged. One curb cut on Colorado Blvd to remain. The Developer/Leasor will be granted conditional vehicle access to the abutting property (490 S Colorado Blvd) by its property Owner. The Applicant will coordinate with the City of Glendale and others, as needed, to finalize the design of any off-site improvements on City property.
 5. the location and extent of any land or right-of-way to be dedicated to the city,
See submitted drawings.
 6. along with a CDOT access permit if required;

CDOT Access Permit Application will be submitted based on change of use to retail.

- F. A detailed landscape plan showing dimensioned sidewalks, street edge treatment, landscaping (all plans shall depict material sizes no larger than installation size plus one (1) year of growth), pedestrian amenities, location and pattern of exterior lighting, the location of fire hydrants, location of trash receptacles, outdoor storage, utilities and screening materials to be used as well as the design of and intended use of all open space;
See submitted drawings.
- G. Utility study and plan showing the proposed utilities including sewers, both sanitary and storm, gas lines, waterlines, and electrical lines showing proposed connections to existing utility systems;
See submitted drawings.
- H. Certified survey of the property sealed by a registered land surveyor;
A Land Survey Plat (LSP) as defined by Colorado Revised Statutes (38-51-102) will be prepared. The survey will be in conformance with minimum standards as defined by CRS-38-51-106.
- I. North arrow and graphic scale;
See submitted drawings.
- J. Other documents or materials required as part of the preliminary site development plan approval;
Not applicable.
- K. If the final site development plan's location is within the Glendale urban renewal plan area, the application shall include the Glendale Economic Redevelopment Authority's comment; and recommendations. (Ord.2007-14§1 (part); Ord.2005-7§1 (part); Ord.1997-13§1(part))
Not applicable.

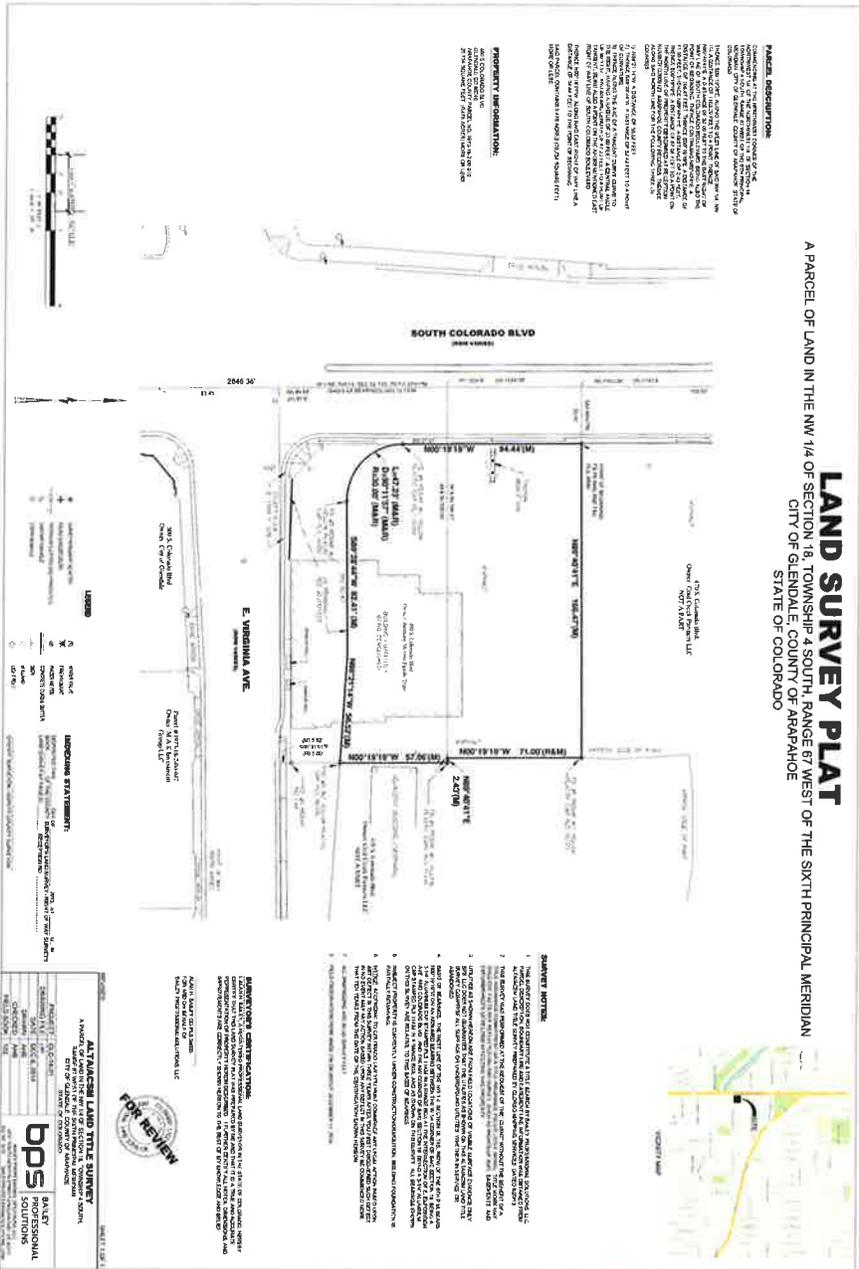
Compliance with Zoning Code

- A. The following table is summary of the attributes for the site plan regarding the dimensional and quantitative performance standards required in the code.

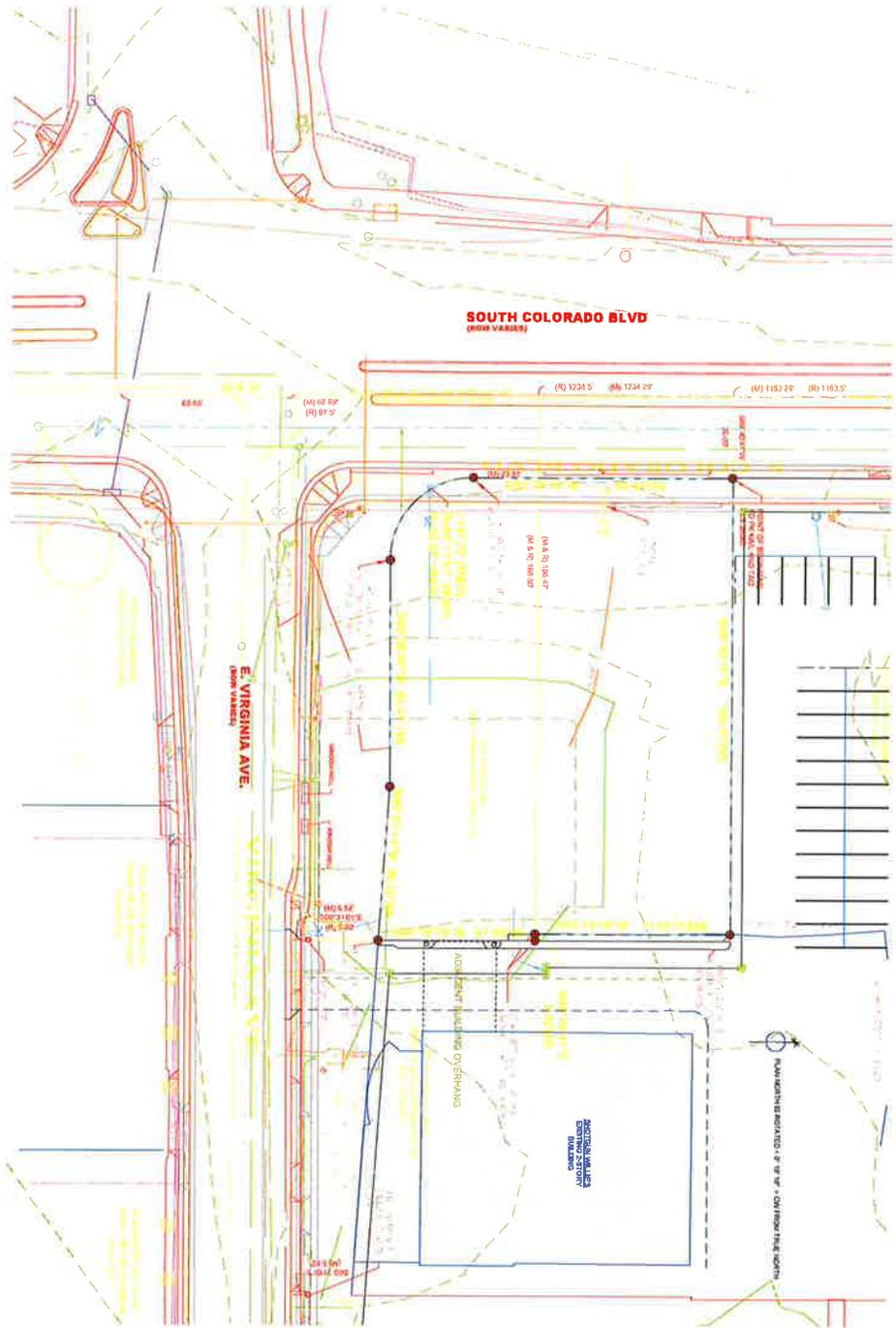
Attribute	Code Sec	Requirement	Submittal	Complies?
Parking Spaces	17.40.040	1 per 250 sq/feet	29 spaces	Complies
Parking Stall Size	17.20.070	8.5 X18, Min	8.5 X18	Complies
Aisle	17.20.10	22.5', Min	22.5'	Complies
	17.20.10	2% of parking spaces	1 Van	Complies
Off-Street Loading	17.24.02	10X45, if routine deliveries	See plans	Complies
Non-Residential Setbacks	17.16.040B	Maximum 20ft from ROW	Colorado >75' Virginia > 72'	Variance requested
Open Space	17.16.070B	25% minimum. 20% if exceeds density of materials	Approx 23.0%	Variance requested
Building Height	17.16.060	45 ft wall, 55 ft ridgeline	35' to parapet	Complies

- B. The applicant will provide detailed information about the sidewalk connection on the ingress/egress area on Colorado Blvd. Provided concept on Site Plan, will update details pending CDOT comments.
- C. The applicant consents to tie Virginia Avenue City owned landscaping into their irrigation system with an agreement for the City to reimburse reasonable water costs annually.
- D. The applicant consents to dedicate the sidewalk on the Colorado Boulevard side to the City.

LAND SURVEY PLAT
A PARCEL OF LAND IN THE NW 1/4 OF SECTION 18, TOWNSHIP 4 SOUTH, RANGE 87 WEST OF THE SIXTH PRINCIPAL MERIDIAN
CITY OF GLENDALE, COUNTY OF ARAPAHOE
STATE OF COLORADO



EXISTING CONDITIONS
THE SMOKING GUN



SCALE
 1" = 20'

DATE
 10/15/2010

PROJECT
 THE SMOKING GUN

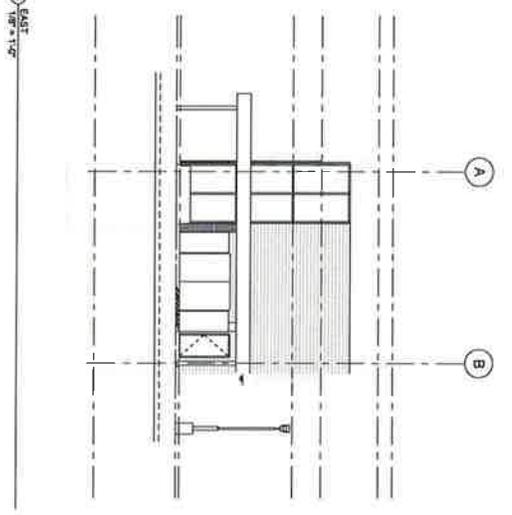
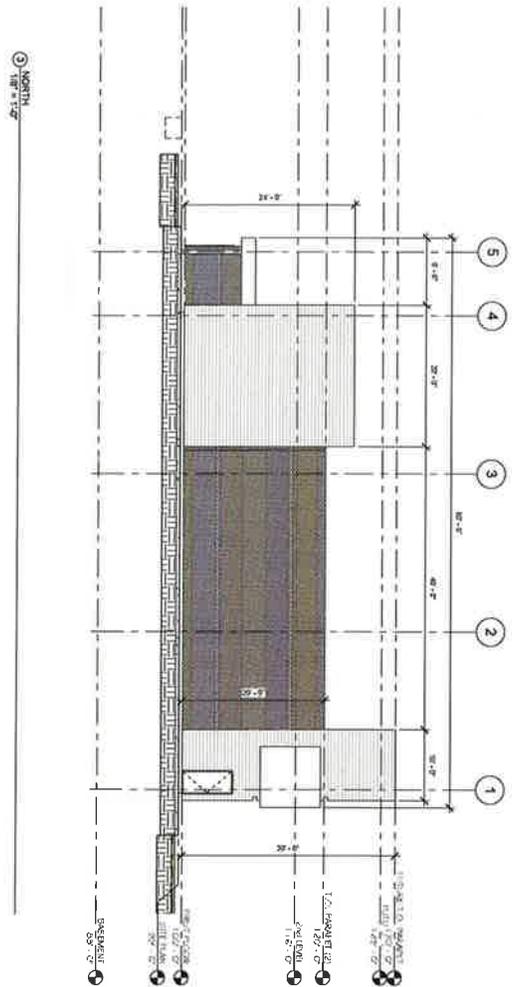
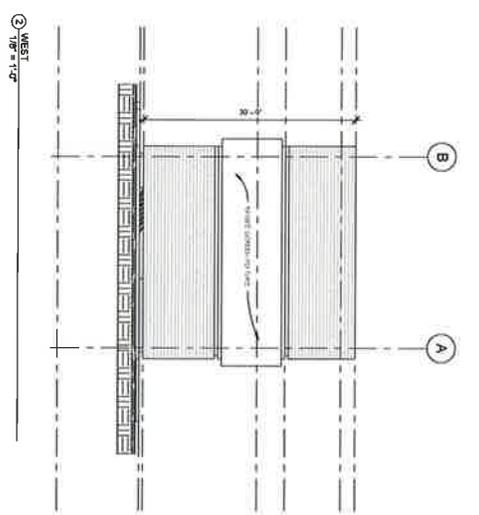
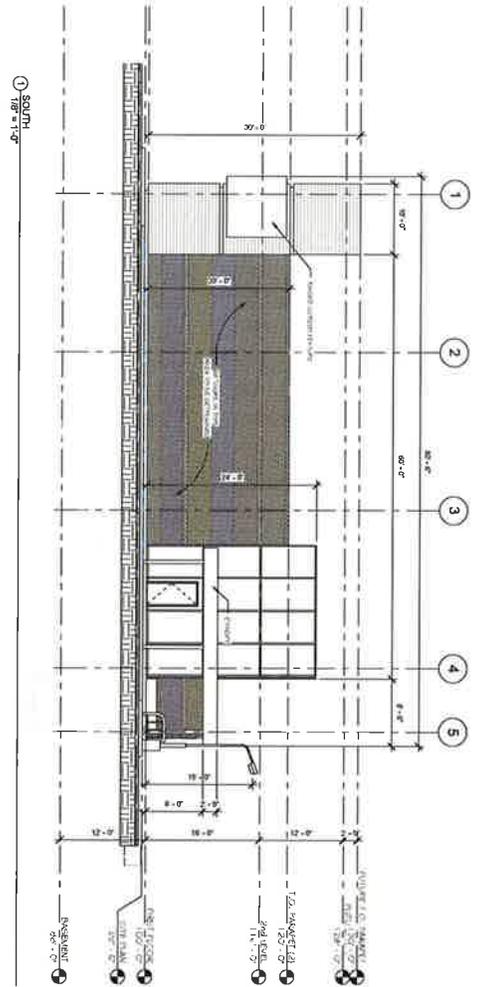
CLIENT
 [Redacted]

DESIGNER
 [Redacted]

REVISIONS

NO.	DATE	DESCRIPTION
1	10/15/2010	ISSUED FOR PERMIT

ELEVATIONS
THE SMOKING GUN





 THE UNIVERSITY OF NORTH CAROLINA

 SCHOOL OF DESIGN

 ARCHITECTURE

 100 SOUTH CAMPUS DRIVE

 CHAPEL HILL, NC 27514

 TEL: 919.974.2000

 WWW.SCHOOLOFDESIGN.UNC.edu

Project: **SDP - 8/13**

EXHIBIT B

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

Arapahoe County Parcel Search 492 S. Colo. Blvd.

PIN: 035136019
AIN: 1973-18-2-00-084
Situs Address: 492 South Colorado Blvd
Situs City: Denver

Full Owner List: Anthony Marino Family Trust
Ownership Type: Fee Simple Ownership
Owner Address: 17786 W 59th Dr
City/State/Zip: Golden, CO 80403-1103

Neighborhood: On Colorado Blvd
Neighborhood Code: 3386.00
Acreage: 0.4812
Land Use: Retail - Single Tenant
Legal Desc: That Part Of The Nw 1/4 Of Sec 18-4-67 Desc As Beg 1163.5 Ft S & 30 Ft E Of The Nw Cor Of Sd Nw 1/4 Th E 166.47 Ft Th S 71 Ft Th E 2.43 Ft Th S 56.61 Ft To A Pt On The N Row Line Of E Virginia Ave Th Nw 56.52 Ft Th W 82.42 Ft Th Alg Curve Rt 47.23 Ft Th N To Beg Sec 18-4-67

	Total	Building	Land
2020 Appraised Value	1,482,000	119,470	1,362,530
2020 Assessed Value	429,780	34,646	395,134

2020 Mill Levy: 88.217

<i>Building</i>	Building	Attributes	Recorded
	1	Quality Grade Improvement Type Bathrooms Architectural Floors Year Built Exterior Wall Construction Type	Average Retail - Single Tenant 3.00 Dispensary 2.00 2015 Stucco D - Wood or Steel Studs Frame

<i>Commercial Area</i>	Building	Description	SqFt
	1	Total Area	1044
	1	Total Area	2175
	1	Total Area	397

<i>Land Line</i>	Units	Land Use
	20962.0000 SF	Merchandising (all Retail)

Note: Land Line data above corresponds to the initial appraised value and does not reflect subsequent appeal related adjustments, if any.

* Not all parcels have available photos / sketches.

In some cases a sketch may be difficult to read. Please contact the Assessors Office for assistance. Measurements taken from the exterior of the building.

The Arapahoe County Assessors Office does not warranty the accuracy of any sketch, nor assumes any responsibility or liability to any user.

Although some parcels may have multiple buildings and photos, at this time our system is limited to 1 sketch and 1 photo per parcel number. Sorry for any inconvenience.

[New Search](#)

EXHIBIT C

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

January 13, 2015 Planning Commission Agenda



Glendale, Colorado

"The Urban Village"

Michael Dunafon Council Members
Mayor

Paula Bovo
Mayor Pro-Tem

Jerry Peters
City Manager

Jeff Allen
Scott Franssen
Joseph Giglio
Dario Katarazic
Doris Rigoni

**REGULAR MEETING OF THE
CITY OF GLENDALE
PLANNING COMMISSION
Tuesday, January 13, 2015
7:00 P.M.
Council Chambers**

AGENDA

7:00 P.M

Call To Order And Roll Call

1. Preliminary Staff Matters
2. Approval of Agenda
3. Approval of the minutes of the December 9, 2014 meeting. (Tab A)
4. Public Comments
5. Public Hearing for Concurrent Preliminary and Final Site Plan for Smoking Gun at 492 S Colorado Blvd (Tab B)
6. Public Comments
7. Other Business
8. Adjourn

EXHIBIT D

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

**January 9, 2015 Memo re: Concurrent Preliminary
And Final Site Development Plan**

Memo



To: Glendale Planning Commission
From: Chuck Line, Deputy City Manager
CC: Jerry Peters, City Manager and Jeff Springer, City Attorney
Date: January 9, 2015
Re: Concurrent Preliminary and Final Site Development Plan for Smoking Gun at 492 S Colorado Blvd.

Introduction

1. 492 S Colorado Blvd, dba Smoking Gun, has submitted a Site Plan for the redevelopment of the corner of Colorado Blvd and East Virginia Avenue. The applicant has submitted all required documents and the fees.
2. The Site Plan is being reviewed concurrently, both preliminary and final site plans.
3. The overall site plan's principal permitted uses consist of retail sales. However, because one principal permitted use for the site plan is more than the maximum of 75%, special review is required.
4. The predominant use of retail sales is consistent with the Land Use Master Plan.

Analysis

5. The site plan has three points of cross access through 490 S Colorado Blvd, which allows the site to have access to other traffic than only northbound on S Colorado Blvd. This site plan also has trash access located off site on the 490 Site. Currently, the applicant does not have a written agreement with the adjacent property owner regarding this cross access, which would be required in a form acceptable to the City prior to issuance of a building permit.
6. The trash enclosure is moderately proximate to the entrance to the adjacent use, this necessitates that a cover will need to be installed on the enclosure, one that limits the visual harm of the dumpster and improves water quality.

7. The landowner will need to dedicate the right-of-way for the Colorado Blvd sidewalk proposed, and 5ft of landscaping on East Virginia Avenue to accommodate a future sidewalk. The Virginia Avenue right-of-way dedication can be used by the applicant for landscaping with an agreement with the City until such time it is needed for a sidewalk. Furthermore, a corner treatment easement will need to be dedicated to the City for a future corner monument.

Procedure

8. The site plan was submitted for concurrent review.¹ Concurrent review allows both the Preliminary and Final Site Development Plans to be considered at the same time, without the standard two step process.
9. The Planning Commission's public hearing must be properly noticed so that the public may have the opportunity to attend and participate in the hearing. The Zoning Code requires that the meeting is noticed by regular mail fifteen (15) days and by posting the property seven (7) days prior to the hearing.² Both mail and posting notice were completed for the Planning Commission hearing.
10. At the public hearing, if it is necessary to obtain additional public comment or information, the Planning Commission may continue the hearing.³ Upon completion of the public hearing, the Planning Commission shall issue its report to the City Council within sixty-five (65) days.⁴ The report shall either recommend approval, with or without conditions, or disapproval, with a written basis prepared by the Zoning Administrator.⁵

Compliance with Zoning Code

11. The following table is summary of the attributes for the site plan regarding the dimensional and quantitative performance standards required in the code.

Attribute	Code Sec	Requirement	Submittal	Complies?
Parking Spaces	17.40.040	1 per 250 sq/feet= 24	29 spaces	Complies
Parking Stall Size	17.20.070	8.5 X18 (plans show measurement to curb of 17.5ft, but with a 6 inch overhang it is 18)	Stall and isle meets minimum requirment	Complies with overhang

¹ §17.32.026

² §17.32.060.F

³ §17.32.070.

⁴ *Id.*

⁵ *Id.*

Handicap Parking	17.20.10	2% of parking spaces=.5 spaces	1 space	Complies
Off-Street Loading	17.24.02	10X45 if routine deliveries	Loading area on east side	Complies, trash pickup area needs cross easement to operate effectively
Non-Residential Setbacks	17.16.040B	Maximum 20ft from ROW	Virginia and Colorado exceed requirement	Complies with special designation by Planning commission
Open Space	17.16.070B	25% or 20% if exceeds density of materials	23.5%	Complies with PC 20% allowance
Building Height	17.16.060	45 ft wall, 55 ft ridgeline	35 foot wall and ridgeline	Complies

12. The site is located in the Regional Commercial Planned Unit Development District and the Eating and Entertainment Overlay District.⁶ The use of specialty retail is a permitted principal use because it occupies at least 60% of the first floor of the structure.⁷

13. The accessory uses are customarily incidental and accessory to the principal use, thus they are part of those percentages.⁸ The code requires that the floor area associated with any one principal permitted use cannot be greater than 75%, without special review. Thus, because the use exceeds 75% special review is required.⁹

If the Site Plan is approved, the approval must also include a special use permit for the above mentioned special review use. The special use permit hearing is part of the Site Plan public hearing.¹⁰

14. The open space requirement is 25% unless it is reduced by a finding of the Planning Commission that the landscaping substantially exceeds minimum standards.¹¹ Thus, the Planning Commission will need to find that the applicant substantially exceeded the minimum standards.

⁶ §17.12.050.A.

⁷ §17.12.050.A.2

⁸ §17.12.040.B.2

⁹ §17.12.040.A.

¹⁰ §17.35.020 (Procedure for Special Use Permit)

¹¹ §17.16.070.B.3

Master Plan Compatibility

15. The detailed land use designation of this location is for eating and entertainment.¹² The development's predominant use is consistent with this land use designation.

16. Performance standards incorporated into quantitative standards, covered by other staff reports, or in the Zoning Code section were omitted.

Recommendations and Conditions

- Staff recommends approval of the site plan, and issuance of the special use permit.
- By Permit, the applicant obtains a cross access agreement.
- The applicant consents to tie Virginia Avenue City owned landscaping into their irrigation system with an agreement for the City to reimburse reasonable water costs annually.
- The applicant dedicates the Colorado Blvd sidewalk and East Virginia Avenue 5ft to the City.
- The applicant dedicates the corner sign easement to the City.

¹² *Id* at 23, Figure 4

EXHIBIT E

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

January 13, 2015 Minutes of the Planning Commission

**MINUTES OF THE PLANNING COMMISSION
CITY OF GLENDALE, COLORADO**

Tuesday, January 13, 2015

7:00 P.M.

City Hall

Call to Order and Roll Call. Chair, Michael Dunafon, called the meeting to order. Members present were Storm Gloor, Scott Norquist, Michael Dunafon, Tyler Mintz, Elizabeth Bonney, and Krista Warnick. Paula Bovo was absent. Chuck Line, Deputy City Manager, was also present.

1. Preliminary Staff Matters. There were no staff matters.
2. Approval of the Agenda. Commissioner Gloor made a motion to approve the agenda. The motion was seconded by Commissioner Mintz. There was no discussion, and the motion passed unanimously.
3. Approval of Minutes of the December 9, 2014 Meeting. Commissioner Norquist motioned to approve the minutes of the December 9, 2014 meeting. The motion was seconded by Commissioner Warnick. There was no discussion, and the motion passed unanimously.
4. Public Comments. There were no public comments.
5. Public Hearing for Concurrent Preliminary and Final Site Plan for Smoking Gun at 492 S. Colorado Blvd. Chair, Michael Dunafon, opened the public hearing, recused himself, and noted Commissioner Gloor would chair the public hearing. Commissioner Gloor introduced Chuck Line. Mr. Line went over the site plan commenting on property boundary lines, future street plans, sidewalks, and landscaping. He went over the use in the eating, entertainment, and overlay district and noted staff recommends approval with conditions.

Mr. Line introduced Donaldo Visani, architect with Olhson Lavoie Collaborative. Mr. Visani went over the design and use of the building. He and Chuck Line answered questions from the Planning Commission. Mr. Line went over the recommendations. Commissioner Gloor closed the public hearing and entertained a motion. Commissioner Norquist motioned to approve the Concurrent Preliminary and Final Site Plan for Smoking Gun at 492 South Colorado Blvd. with staff recommendations. The motion was seconded by Commissioner Mintz. There was no discussion, and the motion passed unanimously. Commissioner Gloor then turned the meeting over to Chair, Michael Dunafon.
6. Public Comments. There were no public comments.
7. Other Business. There was no other business.

EXHIBIT F

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

February 3, 2015 Glendale City Council Agenda

**Agenda
Glendale City Council
Regular Meeting
February 3, 2015**

PLEASE TURN OFF ALL CELLULAR TELEPHONES AND/OR AUDIBLE PAGERS

2/3/2015 11:21AM

4:30 p.m. Study Session

7:00 p.m. Regular Meeting

Pledge of Allegiance

1. Call to Order and Roll Call
2. Approval of Agenda
3. Public Comments (three-minute-per-person time limit)
4. Consent Item
 - a. Minutes of the January 6, 2015 Regular Meeting – Tab A
 - b. Minutes of January 20, 2015, Regular Meeting – Tab B
 - c. Renewal of Hotel and Restaurant Liquor License for Applebee’s Neighborhood Grill and Bar, 410 South Colorado Blvd. – Tab C (Chief Haskins)
 - d. Renewal of Retail Liquor License for YKim Corporation, d/b/a Cherri Plaza Liquors, 4611 & 4605 East Mississippi Avenue – Tab D (Chief Haskins)
 - e. Renewal of Tavern Liquor License for JP Colorado, LLC d/b/a World of Beer, 660 South Colorado Blvd. – Tab E (Chief Haskins)
 - f. Renewal of Optional Premises License for Scrum Enterprises, Inc. d/b/a Scrum Enterprises, 4599 East Tennessee Avenue – Tab F (Chief Haskins)
 - g. Renewal of Hotel and Restaurant Liquor License for Zhuo & Chen Corp. d/b/a Ming’s Dynasty Chinese Restaurant at 4251 East Mississippi Avenue – Tab G – (Chief Haskins)
5. New Manager’s Registration, Neill Boyd, JP Colorado LLC d/b/a World of Beer, 660 South Colorado Blvd. – Tab H (Chief Haskins)
6. Public Hearing for Concurrent and Final Site Development Plan and Special Use Permit, Smoking Gun, 492 South Colorado Blvd. – Tab I (Chuck Line)
7. Discussion Item
 - a. Review the Next City Council Meeting Agenda for March 3, 2015 – Tab J

8. On-Going Updates
 - a. Denver Regional Council of Governments – DRCOG (Paula Bovo, Doris Rigoni)
 - b. Colorado Municipal League – CML (Paula Bovo, Doris Rigoni)
 - c. Transportation Solutions (Jeff Allen)
 - d. Regional Transportation District – RTD (Scott Franssen)
 - e. Green Committee (Dario Katardzic)
 - f. Infinity Park (Linda Cassaday)
 - g. Glendale 180 (Mike Gross)
 - h. Technology & Communications (Paula Bovo, Dario Katardzic)
9. Department Reports
10. Public Comments (three minute per person time limit)
11. Council Reports
12. Other Business
13. Items for Press Release
14. Adjournment

EXHIBIT G

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

February 3, 2015 Minutes of the Glendale City Council

RECORD OF PROCEEDINGS

MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL OF GLENDALE, COLORADO

February 3, 2015

Mayor Mike Dunafon led the Pledge of Allegiance.

1. Call to Order and Roll Call. Mayor Mike Dunafon called the regular meeting of the City Council to order. Sherry Frame, City Clerk, called the roll. The following Council Members were present: Mayor Mike Dunafon, Mayor Pro Tem Paula Bovo, Council Members Jeff Allen, Scott Franssen, Joe Giglio, Dario Katardzic, and Doris Rigoni. City Manager Jerry Peters, City Attorney Matt Giacomini, other members of the City staff, and members of the public also attended the meeting.

2. Approval of Agenda. Council Member Dario Katardzic moved to approve the agenda. This particular motion requires no second. The motion passed unanimously.

3. Public Comments. There was none.

4. Consent Items

- a. Minutes of the January 6, 2015 Regular Meeting
- b. Minutes of January 20, 2015, Regular Meeting
- c. Renewal of Hotel and Restaurant Liquor License for Applebee's Neighborhood Grill and Bar, 410 South Colorado Blvd.
- d. Renewal of Retail Liquor License for YKim Corporation, d/b/a Cherri Plaza Liquors, 4611 & 4605 East Mississippi Avenue
- e. Renewal of Tavern Liquor License for JP Colorado, LLC d/b/a World of Beer, 660 South Colorado Blvd.
- f. Renewal of Optional Premises License for Scrum Enterprises, Inc. d/b/a Scrum Enterprises, 4599 East Tennessee Avenue
- g. Renewal of Hotel and Restaurant Liquor License for Zhuo & Chen Corp. d/b/a Ming's Dynasty Chinese Restaurant at 4251 East Mississippi Avenue

Mayor Pro Tem Bovo moved to approve the consent items. Council Member Rigoni seconded the motion. The motion then passed unanimously.

5. New Manager's Registration, Neill Boyd, JP Colorado LLC d/b/a World of Beer, 660 South Colorado Blvd. Mayor Dunafon read the matter into the record by title only, all Council Members having received copies of the same.

Chief William Haskins said the Police Department ran a criminal check, which showed no criminal activity by Neill Boyd. The State of Colorado Liquor Enforcement Section shows no

RECORD OF PROCEEDINGS

February 3, 2015 Minutes

Page 2 of 4

record of complaints against Mr. Boyd or World of Beer. Based on the investigation and with the consent of the Mayor and City Council, Chief Haskins recommended approval of the application for change of manager for World of Beer.

Neill Boyd, General Manager of World of Beer, appeared before Council for any questions.

Mayor Pro Tem Bovo moved to approve the New Manager's Registration, Neill Boyd, JP Colorado LLC d/b/a World of Beer, 660 South Colorado Blvd. Council Member Katardzic seconded the motion. The motion then passed unanimously.

6. Public Hearing for Concurrent and Final Site Development Plan and Special Use Permit, Smoking Gun, 492 South Colorado Blvd. Mayor Dunafon read the matter into the record by title only, all Council Members having received copies of the same. Mayor Dunafon recused himself from the dais and turned the gavel over to Mayor Pro Tem Bovo, who opened the public hearing.

Chuck Line presented information on the site plan; the building would sit on the old Shotgun Willie's location. Council Member Franssen asked about the planned use of the building, and Mr. Line said the intended use is for the sale of recreational marijuana. Mr. Line said that the Planning Commission and Staff recommend approval of this site plan and issuance of the special use permit.

Council Member Giglio asked about the previous application for a drive-through Starbucks site. Mr. Line said that Starbucks never followed through on obtaining a cross access agreement with the adjacent property owner, which access was a major component of the site plan. Council Member Giglio also asked about the ownership of the site and the leaseholders. Mr. Line said the landowner, the Marino Family, were present at the Planning Commission meeting in January 2015.

Doni Visani of Ohlson Lavoie appeared before Council and gave a description of the project. Council Member Franssen asked whether the building could be used for another purpose if marijuana laws in Colorado changed. Mr. Visani said that the building is constructed simply of steel frames; more windows and doors can easily be added by a future retailer. Council Member Rigoni asked whether a portion of the space is being designed as a grow facility. Mr. Visani said there is an area in the basement that could be used for a future grow, but nothing is being planned at present.

Debbie Matthews appeared before Council for questions. Council Member Giglio asked about her ownership interest in the site. She said that she is 60% owner of Coal Creek and 73% owner of Smoking Gun.

RECORD OF PROCEEDINGS

February 3, 2015 Minutes

Page 3 of 4

Mayor Pro Tem Bovo closed the public hearing. Council Member Franssen moved to approve the Concurrent Preliminary and Final Site Development Plan and Special Use Permit with conditions for Smoking Gun, 492 South Colorado Blvd. Council Member Allen seconded the motion. Council voted, and Council Member Katardzic voted nay. Mayor Pro Tem Bovo asked for individual votes on the motion. Council Member Giglio voted nay. Council Member Rigoni voted nay. Mr. Line said that, as the City Attorney can attest, when there was a tie vote, under Colorado statute, a party who has recused himself or herself because of a potential conflict of interest, may return to vote to break the tie, with disclosure of the conflict. Mayor Dunafon took his place back on the dais. The Mayor noted the reasons for his recusal. He voted yes, which broke the tie. The motion passed 4-3.

7. On-Going Updates:

Infinity Park. Linda Cassaday, Deputy City Manager and Finance Director, said the first home game of the rugby season is February 28. The lead-in for the game will be a match between East High School and Regis High School. A new ticket booth will be erected in the stadium gateway. On May 30, the Event Center will host the Denver Post Travel Expo, which will rent out the full facility.

8. Department Reports. Nicole Limoges, Executive Director of the Glendale Sports Center, said that 115 new members joined in January – the most new members since the month the Center first opened. Josh Bertrand, Public Works Director, said the Rite Aid project is underway, with widening of Cherry Street and Leetsdale Drive. Chuck Line said Natural Grocers is making headway on their fiber lines issue. What was thought to be a phone line running through their proposed relocation property turned out to be one of the largest fiber lines in the metro area. Chief Haskins said Marshal Baker, the first marshal in the City of Glendale and the only member of Glendale law enforcement who was ever killed in the line of duty, will be memorialized on the Colorado Law Enforcement memorial on May 1, 2015. Linda Cassaday said the software giving customers the ability to pay utility payments online has been installed, and the process will be available in the near future. Jerry Peters thanked the Public Works Department and the Police Department for their response to the recent snowstorm and their cleanup of a homeless camp on the Creek.

9. Public Comments. There was none.

10. Council Reports. Council Member Allen thanked everyone who attended the Chamber of Commerce's Member Appreciation luncheon. Mayor Dunafon congratulated Josh Bertrand, who saved a man's life in the City after attending the Police Department's Run, Hide, Fight, Treat training.

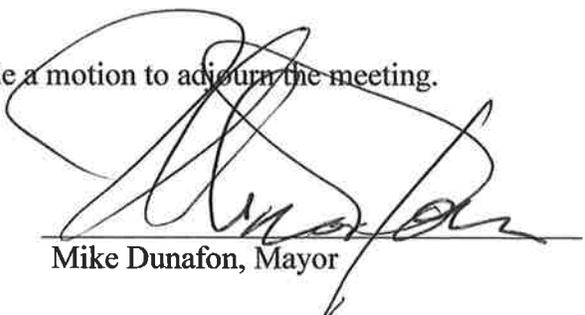
11. Other Business. There was no other business.

RECORD OF PROCEEDINGS

February 3, 2015 Minutes
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12. Adjournment. Council Member Allen made a motion to adjourn the meeting.

Dated: April 7, 2015


Mike Dunafon, Mayor

ATTEST:

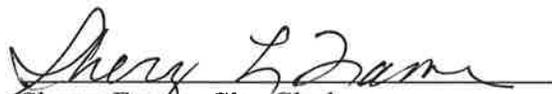

Sherry Frame, City Clerk

EXHIBIT H

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

**February 3, 2015 Audio Recording of
Glendale City Council Meeting**

Audio Recording provided in native format

<https://bhfs.sharefile.com/d-s7438f6b3474a48ba9d007a8069b54c07>

Web player: <https://www.fortherecord.com/products/ptrwebplayer>

EXHIBIT I

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

March 17, 2015 Glendale City Council Agenda

Agenda
Glendale City Council
Regular Meeting
March 17, 2015

PLEASE TURN OFF ALL CELLULAR TELEPHONES AND/OR AUDIBLE PAGERS

3/16/2015 18:17PM

7:00 p.m. Regular Meeting

Pledge of Allegiance

1. Call to Order and Roll Call
2. Approval of Agenda
3. Public Comments (three-minute-per-person time limit)
4. Consider eliminating any ambiguity on a vote taken at the February 3, 2015 City Council meeting to approve the Concurrent and Final Site Development Plan and Special Use Permit, with staff conditions, for Smoking Gun, 492 South Colorado Blvd.
5. Re-vote on the Motion to Approve Concurrent and Final Site Development Plan and Special Use Permit, with staff conditions, for Smoking Gun, 492 South Colorado Blvd., made by Council Member Scott Franssen and seconded by Council Member Jeff Allen
6. Public Comments (three minute per person time limit)
7. Other Business
8. Items for Press Release
9. Adjournment

EXHIBIT J

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

March 17, 2015 Minutes of the Glendale City Council

RECORD OF PROCEEDINGS

MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL OF GLENDALE, COLORADO

March 17, 2015

Mayor Mike Dunafon led the Pledge of Allegiance.

1. Call to Order and Roll Call. Mayor Mike Dunafon called the regular meeting of the City Council to order. Sherry Frame, City Clerk, called the roll. The following Council Members were present: Mayor Mike Dunafon, Mayor Pro Tem Paula Bovo, and Council Members Jeff Allen, Scott Franssen, Joe Giglio, and Doris Rigoni. Council Member Dario Katardzic was absent. City Manager Jerry Peters, City Attorneys Jeff Springer and Matt Giacomini, and other members of the City staff also attended the meeting.

2. Approval of Agenda. Council Member Jeff Allen moved to approve the agenda. This particular motion requires no second. The motion passed unanimously.

3. Public Comments. There was none.

Mayor Dunafon recused himself and handed the gavel to Mayor Pro Tem Bovo.

4. Consider Eliminating Any Ambiguity on a Vote Taken at the February 3, 2015 City Council Meeting to Approve the Concurrent and Final Site Development Plan and Special Use Permit, With Staff Conditions, for Smoking Gun, 492 South Colorado Blvd. Mayor Pro Tem Bovo read the matter into the record by title only, all Council Members having received copies of the same.

City Attorney Springer said he listened to the recording of the February 3, 2015 Council meeting and said the recording is not as clear as he would like it to be. Mr. Springer said that in his opinion the recording creates a potential ambiguity. Even though everyone at the meeting proceeded on the assumption there was a 3-3 vote and the Mayor, appropriately under Colorado state law, broke the tie, the recording does not make that clear. Mr. Springer suggested the public hearing not be reopened, as Council has already heard applicant's presentation, but instead Council should revote.

Mr. Springer noted Council Member Katardzic was not present and is out of the country. Mr. Springer said he previously suggested City staff reach out to Mr. Katardzic to register a vote. Mr. Springer asked Ms. Frame to give the details of her attempts to reach Mr. Katardzic.

Ms. Frame said that she first attempted to reach Mr. Katardzic on Monday, March 16, 2015, at the request of Chuck Line, by email to his personal email account, by text to his cell phone, and by sending a Facebook friend request. She did hear back from him in the afternoon via text, saying he would not be able to call into the Council meeting because he would be flying from Mexico to Denver at that time. Later Monday afternoon, she sent two more text messages asking Mr. Katardzic if he could call her at his convenience to record his vote so it could be read to the Council at the upcoming meeting. She did

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Page 2 of 3

not receive a reply from him on Monday so sent him a Facebook Instant Message and a phone text on Tuesday morning, asking again for his participation in the recording, but she did not hear back from him.

Mr. Springer said on February 3 there was an aye/nay vote originally, then the Mayor Pro Tem concluded the need of an individual vote, but the Mayor Pro Tem's vote is not heard on the recording. Mr. Springer said his opinion was that Council Member Katardzic's vote should be registered as a "no," as Katardzic voted "no" previously and there is no evidence to conclude he has changed his mind.

Council Member Franssen moved to Consider Eliminating Any Ambiguity on a Vote Taken at the February 3, 2015 City Council Meeting to Approve the Concurrent and Final Site Development Plan and Special Use Permit, With Staff Conditions, for Smoking Gun, 492 South Colorado Blvd. Council Member Allen seconded the motion. The motion then passed unanimously.

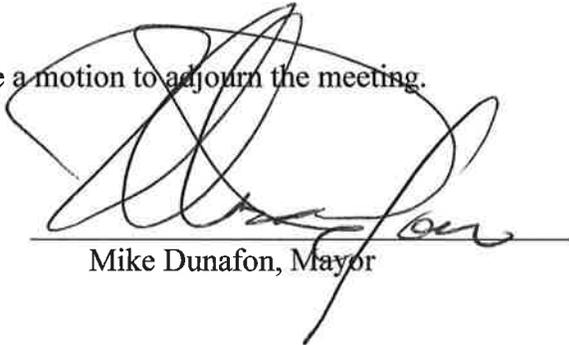
5. Re-vote on the Motion to Approve Concurrent and Final Site Development Plan and Special Use Permit, With Staff Conditions, for Smoking Gun, 492 South Colorado Blvd., Made by Council Member Scott Franssen and Seconded by Council Member Jeff Allen. Mayor Pro Tem Bovo read the matter into the record by title only, all Council Members having received copies of the same.

Council voted on the Motion to Approve Concurrent and Final Site Development Plan and Special Use Permit, With Staff Conditions, for Smoking Gun, 492 South Colorado Blvd., Made by Council Member Scott Franssen and Seconded by Council Member Jeff Allen, and the motion passed 5-1.

Mayor Dunafon returned to the dais.

6. Other Business. There was no other business.
7. Items for Press Release. There was none.
8. Adjournment. Council Member Allen made a motion to adjourn the meeting.

Dated: April 7, 2015


Mike Dunafon, Mayor

ATTEST:


Sherry Frame, City Clerk

EXHIBIT K

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

**March 17, 2015 Audio Recording of
Glendale City Council Meeting**

Audio Recording provided in native format

<https://bhfs.sharefile.com/d-s779f3cd9c004460cb650f7b84fd9031e>

Web player: <https://www.fortherecord.com/products/ptrwebplayer>

EXHIBIT L

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

January 26, 2016 Ethics Watch Letter



January 29, 2016

Mayor Pro Tem Paula Bovo
City of Glendale
Glendale, CO 80246

RE: Ethics Complaint Against Mayor Mike Dunafon

Dear Mayor Pro Tem Bovo,

Pursuant to Chapter 2.14 of the Glendale Municipal Code, Ethics Watch hereby files this ethics complaint against Glendale Mayor Mike Dunafon.

1. Smoking Gun vote

The minutes of the meeting of the Glendale City Council on February 3, 2015, a copy of which is attached as Exhibit 1, reflect that Mayor Dunafon initially recused from a vote on a Concurrent and Final Site Development Plan and Special Use Permit for the Smoking Gun at 492 S. Colorado Boulevard (the "Plan"). We understand that Mayor Dunafon's initial recusal was due to his wife's ownership interest in the Smoking Gun.

Approval of the Plan was initially defeated on a tie vote, 3-3. Mayor Dunafon then rescinded his recusal and proceeded to vote on a matter in which he had a financial interest. By breaking the tie, Mayor Dunafon ensured passage of the Plan, that would directly benefit his financial interest.

Chair Mr Section 4.27 of the Glendale Municipal Code provides:

No member of the Council shall vote on any question in which he has a financial interest, other than the common public interest, or on any question concerning his own conduct.

The same prohibition is found in the City's Ethics Code, Glendale Municipal Code Section 2.14.040(B):

No elected official, officer, board member, employee, or independent contractor shall perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative or agent.

An advocate for the Plan erroneously stated during the meeting that Colorado law allows a councilmember who is recused due to a conflict of interest to cast the deciding vote to benefit his personal financial interests in order to break a tie. To the contrary,

Colorado state law – assuming it could displace the specific, blanket prohibition on conflicted votes contained in Section 4.27 of the Municipal Code – allows local government officials to act under a conflict of interest only if the official files in writing a conflict of interest disclosure with the Colorado Secretary of State. C.R.S. § 24-18-110. It appears that Mayor Dunafon did not file such a disclosure.

2. Bavarian Inn Restaurant vote

The minutes of the Glendale City Council meeting of April 7, 2015, a copy of which is attached as Exhibit 2, reflect that an item on the consent agenda was approval of the renewal of the liquor license for Bavarian Inn Restaurant, Inc. d/b/a Shotgun Willie's. It has been widely reported that Shotgun Willie's is also owned by the Mayor's wife. Yet Mayor Dunafon voted to approve the consent agenda, including the renewal of the liquor license for his wife's business.

The same prohibitions Mayor Dunafon violated when he cast his conflicted vote on the Smoking Gun vote apply fully to his conflicted vote on the Bavarian Inn Restaurant license renewal.

Requested Action

Pursuant to Glendale Municipal Code § 2.14.040(F), Ethics Watch requests that City Council hold a public hearing on this complaint, render findings, and adopt a resolution censuring Mayor Dunafon for his conflicted votes.

Please feel free to contact me to discuss this matter further.

Very truly yours,



Luis Toro
Director

EXHIBIT M

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

April 29, 2016 Chambers Report

NATHAN D. CHAMBERS LLC

ATTORNEY AT LAW

Nathan D. Chambers, Esq.
Email: nchambers@nathanchamberslaw.com

April 29, 2016

Springer and Steinberg, P.C.
ATTN: Jeff Springer
1600 Broadway, Suite 1200
Denver, CO 80202

RE: Ethics Complaint Against Mayor Mike Dunafon

Dear Mr. Springer:

Please find my Report regarding the Ethics Complaint Against Mayor Mike Dunafon below. Thank you for the opportunity to conduct this investigation and please do not hesitate to contact me with any questions or concerns.

INTRODUCTION

I was retained by the law firm of Springer and Steinberg, P.C. to conduct an independent investigation into the Ethics Complaint Against Mayor Mike Dunafon dated January 29, 2016.

MATERIALS REVIEWED AND INVESTIGATION CONDUCTED

As part of this investigation I reviewed the following materials:

1. Ethics Complaint Against Mayor Mike Dunafon. (Exhibit 7, hereinafter "the Complaint").
2. Planning Commission Agenda and Materials for January 13, 2015 Meeting. (Exhibit 1).
3. Planning Commission Minutes for January 13, 2015 Meeting. (Exhibit 2).
4. Audio Recording of Planning Commission January 13, 2015 Meeting. (Reviewed at Glendale Municipal Building).
5. City Council Agenda and Materials for February 3, 2015 Meeting. (Exhibit 3).
6. City Council Minutes for February 3, 2015 Meeting. (Exhibit 4).
7. Audio Recording of City Council February 3, 2015 Meeting. (Reviewed at Glendale Municipal Building).
8. City Council Agenda for March 17, 2015 Meeting. (Exhibit 5).
9. City Council Minutes for March 17, 2015 Meeting. (Exhibit 6).

10. Audio Recording of City Council March 17, 2015 Meeting. (Reviewed at Glendale Municipal Building).
11. Records from Jefferson County Clerk and Recorders website (Exhibit 8).
12. City Council Agenda for April 7, 2015 Meeting. (Exhibit 9).

As part of this investigation, I also interviewed the following people:

1. Chuck Line, Deputy City Manager.
2. Mike Dunafon, Mayor.
3. Debbie Matthews, Majority owner of Smoking Gun.
4. Rich Gilman, CPA.

THE ETHICS COMPLAINT AGAINST MAYOR MIKE DUNAFON

The Complaint in this matter was lodged by Luis Toro as the Director of Ethics Watch. The Complaint alleges that Mayor Dunafon voted on matters that benefited his personal financial interests. Specifically, the Complaint alleges impropriety with respect to two votes cast by Mayor Dunafon during City Council Meetings.

1. The Complaint alleges that at the February 3, 2015 City Council Meeting, Mayor Dunafon voted on the Site Development Plan for the Smoking Gun at 492 South Colorado Boulevard (hereinafter "site development plan" or "development plan"). The Complaint alleges that Mayor Dunafon had a "personal financial interest" in approval of the Site Development Plan.
2. The Complaint further alleges that at the April 7, 2015 City Council Meeting, Mayor Dunafon voted on the renewal of the liquor license for the Bavarian Inn Restaurant and the he had a "personal financial interest" in the renewal of such liquor license.

FACTUAL BACKGROUND

Approval of Site Development Plan for 492 South Colorado Boulevard

On December 24, 2014, the Smoking Gun Land Company LLC, submitted an application to the City of Glendale for the development of a new structure at 492 South Colorado Boulevard. (Exhibit 1). The application was reviewed by the City's staff, including the Deputy City Manager. After review, staff recommended approval of the site plan. A public hearing for the site development plan was scheduled for the January 13, 2015 Regular Meeting of the City of Glendale Planning Commission. (Exhibit 1).

The Planning Commission met in regular session on January 13, 2015 at which time the site development plan for 492 South Colorado Boulevard was opened for public hearing. Mayor Dunafon recused himself and Commissioner Gloor chaired the public hearing. Deputy City Manager Chuck Line reviewed the site development plan and

noted that the City's staff recommended approval of the plan with conditions. Donaldo Visani, an architect working for the applicant on the site development plan, also reviewed the plan for the Planning Commission. Mr. Line and Mr. Visani answered questions from the Planning Commission. The site plan for 492 South Colorado Boulevard was approved unanimously by the Planning Commission. (Exhibit 2).

Upon approval of the site development plan by the Planning Commission, and pursuant to Chapter 17.32 of the Glendale Municipal Code, the plan was forwarded to City Council. A public hearing on the site development plan for 492 South Colorado Boulevard was scheduled for the February 3, 2015 Regular Meeting of the Glendale City Council. (Exhibit 3).

The City Council met on February 3, 2015. During the February 3, 2015 meeting, a public hearing regarding the Site Development Plan and Special Use Permit for Smoking Gun at 492 South Colorado Boulevard was conducted. Mayor Dunafon recused himself and Mayor Pro Tem Paula Bovo presided over the public hearing. Deputy City Manager Chuck Line provided the City Council with his report regarding the development plan and reported that City staff and the Planning Commission recommended approval of the plan. Debbie Matthews, the majority owner of the applicant, and Donaldo Visani, the architect for the applicant, both appeared and answered questions from Council members. A motion was made and seconded to approve the development plan. A voice vote was taken at approximately 7:35 p.m. The results of the voice vote were inconclusive. Accordingly, a second vote was taken. The second vote was an imprecise variation of a roll call vote. Various members of City Council, without identifying themselves and without benefit of a formal roll call, cast their votes. The results of the second vote were also less than clear; however, it is apparent that all members of the City Council believed that the second vote resulted in a tie. Importantly, it was announced that the vote was a tie and no one present at the hearing, including those members of City Council who had just voted, noted any objection to the conclusion that the second vote was a tie. (Exhibit 4 and audio recording).

Because of the tie vote, the Deputy City Manager advised council that, in his opinion, Mayor Dunafon could vote to break the tie provided he disclosed the reasons for his initial recusal. At approximately 7:36 p.m., Mayor Dunafon returned to the dais, informed City Council, and all those assembled, that he had no ownership interest in the Smoking Gun and that he had recused himself in "an abundance of caution." Mayor Dunafon then voted to approve the site development plan. (Exhibit 4 and audio recording).

Because of the lack of clarity surrounding the February 3, 2015 City Council vote on the site development plan, the issue of Council's approval of the site development plan at 492 South Colorado Boulevard was placed on the Agenda for the March 17, 2015 Regular Meeting of the City Council. (Exhibit 5). At the March 17, 2015 City

Council meeting, Mayor Dunafon recused himself and the issue of whether Council should act to eliminate any ambiguity surrounding the vote taken during the February 3, 2015 City Council meeting was considered. City Attorney Jeff Springer reported that he had reviewed the audio recording of the February 3, 2015 City Council meeting and, based on his review, the record was not clear and that there was potential ambiguity surrounding the vote taken at that meeting regarding the site development plan. City Attorney Springer recommended that Council revote on the site development plan in order to remove any confusion or ambiguity. A motion was made for Council to revote on the site development plan in order to eliminate any ambiguity which motion was seconded. The motion passed unanimously. Council then proceeded to revote on the Site Development Plan and Special Use Permit, for Smoking Gun at 492 South Colorado Boulevard. The site development plan was approved by a vote of 5-1. The only dissenting vote was the vote of Councilman Katardzic. Councilman Katardzic was not present at the March 17, 2015 City Council meeting; however, because he had voted against approval of the plan at the February 3, 2015 hearing a "no" vote was registered on Council Katardzic's behalf at the March 17, 2015 hearing. (Exhibit 6 and audio recording).

On January 29, 2016, 360 days after the February 3, 2015 City Council meeting, Luis Toro, as director of Ethics Watch, filed an Ethics Complaint Against Mayor Mike Dunafon. The Complaint alleged, *inter alia*, as follows:

- That Mayor Dunafon recused himself from consideration of the site development plan at the February 3, 2015 City Council meeting because of "his wife's ownership interest in the Smoking Gun."
- The plan was initially defeated on a tie vote, 3-3; whereupon, Mayor Dunafon rescinded his recusal and voted to approve the site development plan thereby "directly benefit(ing) his financial interest."
- That "an advocate for the Plan" advised Council that "a councilmember who is recused due to a conflict of interest (may) cast the deciding vote to benefit his personal financial interests in order to break a tie." The Complaint refers to Section 4.27 of the Glendale Municipal Code and to C.R.S. §24-18-110.

It is first important to note as a factual matter that the Complaint is inaccurate in stating the Mayor recused himself because of "his wife's ownership interest in the Smoking Gun." In fact, in February of 2015, Debbie Matthews and Mike Dunafon were not married. Public records on file with the Jefferson County Clerk and Records Office show conclusively that Ms. Matthews and Mr. Dunafon obtained a marriage license on July 20, 2015 and were married on July 25, 2015. (Exhibit 8). Indisputably, Ms. Matthews was not Mr. Dunafon's wife during the relevant time period.

Further, investigation reveals that Mr. Dunafon had no ownership or other financial interest in the Smoking Gun business. As noted above, during the relevant time period, Debbie Matthews was the majority owner of the Smoking Gun. In February of 2015, Ms. Matthews held a 73% ownership interest in the Smoking Gun. In August of 2015, Ms. Matthews sold 5% of her ownership interest and has henceforth held a 68% ownership interest in the Smoking Gun. At no time did Mr. Dunafon have any ownership interest in the Smoking Gun. At the February 3, 2015 City Council meeting, Mayor Dunafon truthfully informed Council that he had no ownership in the Smoking Gun. Mayor Dunafon further informed Council that he recused himself, not because of Mr. Matthew's interest in the Smoking Gun, but rather in an abundance of caution.

During separate interviews with Mr. Dunafon and Ms. Matthews, both confirmed that Dunafon does not have and has never had any ownership interest in the Smoking Gun. Ms. Matthews reported that she maintains separate bank accounts from Mr. Dunafon and that Mr. Dunafon is not now and has never been a signor on her bank accounts.

An interview with Rich Gilman, CPA, further corroborated that Mr. Dunafon had no financial interest in the Smoking Gun. Mr. Gilman reported that he prepared Mr. Dunafon's tax returns and that he has prepared Ms. Matthew's tax documents for more than 20 years. Mr. Gilman reported that Ms. Matthews always filed her individual returns as a single person even though it would have been to her financial advantage to file jointly with Mr. Dunafon. Because Dunafon and Matthews were married in July of 2015, they did file a joint tax return for 2015. The tax return for 2015 was the first time that they filed jointly. Mr. Gilman also prepared tax documents for the Smoking Gun entities and he confirmed that Mr. Dunafon had "no interest" in the companies. Mr. Gilman stated that Ms. Matthew's had several bank accounts and that, to his knowledge, Mr. Dunafon was not a signor on any of those accounts. He added that he would review Matthew's bank statements periodically and he saw no co-mingling of assets.

ANALYSIS

Glendale Municipal Charter, Section 4.27(c)., provides that "no member of the Council shall vote on any question in which he has a financial interest." The Complaint offers no evidence, apart from the factually incorrect allegation that Mayor Dunafon was married to Debbie Matthews during the relevant time period, that Mayor Dunafon had any financial interest in the site development plan for 492 South Colorado Boulevard. Although one can never prove a negative, *i.e.* it is impossible to prove that Mayor Dunafon did not have a financial interest in the site development plan, the uncontradicted evidence is that he had no such interest. Because Mayor Dunafon had no financial interest in the site development plan there was no conflict of interest which required his recusal in the first instance. Rather, as the Mayor observed during the

February 3, 2015 City Council meeting, his recusal was based on his exercise of discretion and not based on an actual conflict of interest.

Chapter 2.14 of the Glendale City Charter also imposes ethical restrictions on self-dealing by the City's elected officials. Specifically, Chapter 2.14.040(B) provides as follows:

"No elected official, officer, board member, employee, or independent contractor shall perform an official act directly and **substantially affecting** to its economic benefit a business or other undertaking in which he either has a **substantial financial interest** or is engaged as counsel, consultant, representative or agent. "

Again, the Complaint offers no evidence that Mayor Dunafon derived any economic benefit from City Council's approval of the site development plan. Mr. Dunafon did not have a "financial interest", substantial or otherwise, in the Smoking Gun project. Further, he was not engaged as counsel, consultant, representative or agent on behalf of Smoking Gun. The Complaint offers no evidence of a violation of Chapter 2.14 and this investigation has revealed no such evidence.

The Complaint's reference to Colorado Revised Statutes is notable inasmuch as the application of the Colorado Statute to the City of Glendale, as a home rule city, is questionable. Nevertheless, the Complaint specifically references C.R.S. §24-18-110 which directs elected officials to make a written disclosure to the Secretary of State of any "financial interest" which might create a conflict of interest. Once such written disclosure is made, the public official may perform an "official act" if he states for the record the nature of his financial interest in the matter under consideration. Importantly, C.R.S. 24-18 102 (4) defines "financial interest" as "a **substantial interest** held by an individual which is:

- (a) An ownership interest in a business;
- (b) A creditor interest in an insolvent business;
- (c) An employment or a prospective employment for which negotiations have begun;
- (d) An ownership interest in real or personal property;
- (e) A loan or any other debtor interest; or
- (f) A directorship or officership in a business."

Here, there is no evidence that Mayor Dunafon had any interest, let alone a "substantial interest", in the Smoking Gun businesses. Specifically, Mayor Dunafon had no ownership interest, creditor interest, employment relationship, debtor interest, or directorship or officer position in the Smoking Gun businesses. In short, there simply was no "financial interest" as that term is defined under Colorado law.

Further, and although not cited in the Complaint, C.R.S. §24-18-109 (2)(b) provides that a local government official “shall not perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.” Again, there is no evidence that Mayor Dunafon had a “substantial financial interest or [was] engaged as counsel, consultant, representative, or agent” of the Smoking Gun businesses.

In summary and contrary to the Complaint, there is no evidence that Mayor Dunafon’s participation in the February 3, 2015 vote on the site development plan was connected to his “personal financial interest.”

Approval of the Shotgun Willie’s Liquor License Renewal

The Complaint alleges impropriety by Mayor Dunafon in voting to approve the consent agenda for the April 7, 2015 City Council Meeting because the consent agenda included the “renewal of the liquor license for his wife’s business.” The Complaint charges that the Mayor’s vote in approving the agenda was improper for the same reasons that his vote on the site development plan was improper. (Exhibit 7).

The same analysis that was used to evaluate Mayor Dunafon’s actions as part of the site development plan is applicable to his participation in approval of the liquor license renewal. In summary, and contrary to the Complaint, Shotgun Willie’s was not owned by Mayor Dunafon’s wife. Further, there is no evidence that Mayor Dunafon had any financial interest in the renewal of the Shotgun Willie’s license.

Furthermore, “Approval of Agenda” was action item number two and “Consent Items” was action item number four on the City Council’s Agenda for the April 7, 2015 meeting. (Exhibit 9). The Minutes of the April 7, 2015 meeting reveal that both the Agenda and the Consent Items were approved unanimously. There is no evidence that Mayor Dunafon voted on either agenda item. Rather, because he was presiding over the City Council meeting on April 7, 2015, Mayor Dunafon did call for a vote by City Council on approval of the Agenda and the Consent Items; however, Mayor Dunafon did not cast a vote regarding either item nor did he make any comments about any of the consent issues. By unanimous vote, City Council approved the Agenda and the Consent Items and Mayor Dunafon did not vote on either issue. (Exhibit 7-2).

CONCLUSION

There is no evidence that Mayor Dunafon engaged in any conduct that benefited or otherwise impacted his personal financial interests. The Complaint appears to be based entirely on the allegation that Mayor Dunafon voted on matters that advanced his wife’s business interests. However, as has been shown, during the relevant time period Mr. Dunafon and Ms. Matthews were not married. The allegation that Mayor Dunafon

cast votes which benefited his "personal financial interests" appears to be without evidentiary support. The Complaint offers no evidence, and this investigation has revealed no evidence, that Mr. Dunafon had any financial interest in either the Smoking Gun project or in the Bavarian Inn liquor license. To the contrary, the evidence is that Mr. Dunafon's personal finances were maintained separate and apart from Ms. Matthew's and that he had no financial interest in either the Smoking Gun project or the Bavarian Inn liquor license.

Chapter 2.14.040 (E) of the City Charter provides as follows: "The City Council may dismiss frivolous complaints submitted by persons under this chapter." The word "frivolous" has been defined numerous times by Colorado Courts. (See e.g., *W. United Realty, Inc. v. Isaacs*, 679 P.2d 1063 (Colo. 1984); *Fox v. Div. Eng. For Water Div. 5*, 810 P.2d 644 (Colo. 1991); *Wheeler v. T.L. Roofing, Inc.*, 74 P.3d 499 (Colo. App. 2003); *Double Oak Constr., L.L.C. v. Cornerstone Dev. Int'l, L.L.C.*, 97 P.3d 140 (Colo. App. 2003, (A claim is "frivolous" if the proponent can present no rational argument based on the evidence or law in support of that claim.)). Here, the applicable law, Chapter 2.14 of the Glendale City Charter, prohibits an elected official from performing any official act in which he has a "substantial financial interest." The complainant has presented no evidence that Mayor Dunafon had any financial interest in either the Smoking Gun project or in the Bavarian Inn liquor license and this investigation has revealed no such evidence. Accordingly, there appears to be no rational argument based on the evidence or that law that supports the Complaint. Therefore, the Complaint is frivolous and may be dismissed.

Please feel free to contact me if there are any questions or concerns.

Sincerely



Nathan D. Chambers

Attachments as indicated

EXHIBIT 1



Glendale, Colorado

"The Urban Village"

Michael Dunafon Council Members
Mayor

Paula Bovo
Mayor Pro-Tem

Jerry Peters
City Manager

Jeff Allen
Scott Franssen
Joseph Giglio
Dario Katarazic
Doris Rigoni

**REGULAR MEETING OF THE
CITY OF GLENDALE
PLANNING COMMISSION
Tuesday, January 13, 2015
7:00 P.M.
Council Chambers**

AGENDA

7:00 P.M

Call To Order And Roll Call

1. Preliminary Staff Matters
2. Approval of Agenda
3. Approval of the minutes of the December 9, 2014 meeting. (Tab A)
4. Public Comments
5. Public Hearing for Concurrent Preliminary and Final Site Plan for Smoking Gun at 492 S Colorado Blvd (Tab B)
6. Public Comments
7. Other Business
8. Adjourn

Memo



To: Glendale Planning Commission
From: Chuck Line, Deputy City Manager
CC: Jerry Peters, City Manager and Jeff Springer, City Attorney
Date: January 9, 2015
Re: Concurrent Preliminary and Final Site Development Plan for Smoking Gun at 492 S Colorado Blvd.

Introduction

1. 492 S Colorado Blvd, dba Smoking Gun, has submitted a Site Plan for the redevelopment of the corner of Colorado Blvd and East Virginia Avenue. The applicant has submitted all required documents and the fees.
2. The Site Plan is being reviewed concurrently, both preliminary and final site plans.
3. The overall site plan's principal permitted uses consist of retail sales. However, because one principal permitted use for the site plan is more than the maximum of 75%, special review is required.
4. The predominant use of retail sales is consistent with the Land Use Master Plan.

Analysis

5. The site plan has three points of cross access through 490 S Colorado Blvd, which allows the site to have access to other traffic than only northbound on S Colorado Blvd. This site plan also has trash access located off site on the 490 Site. Currently, the applicant does not have a written agreement with the adjacent property owner regarding this cross access, which would be required in a form acceptable to the City prior to issuance of a building permit.
6. The trash enclosure is moderately proximate to the entrance to the adjacent use, this necessitates that a cover will need to be installed on the enclosure, one that limits the visual harm of the dumpster and improves water quality.

7. The landowner will need to dedicate the right-of-way for the Colorado Blvd sidewalk proposed, and 5ft of landscaping on East Virginia Avenue to accommodate a future sidewalk. The Virginia Avenue right-of-way dedication can be used by the applicant for landscaping with an agreement with the City until such time it is needed for a sidewalk. Furthermore, a corner treatment easement will need to be dedicated to the City for a future corner monument.

Procedure

8. The site plan was submitted for concurrent review.¹ Concurrent review allows both the Preliminary and Final Site Development Plans to be considered at the same time, without the standard two step process.
9. The Planning Commission's public hearing must be properly noticed so that the public may have the opportunity to attend and participate in the hearing. The Zoning Code requires that the meeting is noticed by regular mail fifteen (15) days and by posting the property seven (7) days prior to the hearing.² Both mail and posting notice were completed for the Planning Commission hearing.
10. At the public hearing, if it is necessary to obtain additional public comment or information, the Planning Commission may continue the hearing.³ Upon completion of the public hearing, the Planning Commission shall issue its report to the City Council within sixty-five (65) days.⁴ The report shall either recommend approval, with or without conditions, or disapproval, with a written basis prepared by the Zoning Administrator.⁵

Compliance with Zoning Code

11. The following table is summary of the attributes for the site plan regarding the dimensional and quantitative performance standards required in the code.

Attribute	Code Sec	Requirement	Submittal	Complies?
Parking Spaces	17.40.040	1 per 250 sq/feet= 24	29 spaces	Complies
Parking Stall Size	17.20.070	8.5 X18 (plans show measurement to curb of 17.5ft, but with a 6 inch overhang it is 18)	Stall and isle meets minimum requirment	Complies with overhang

¹ §17.32.026

² §17.32.060.F

³ §17.32.070.

⁴ *Id.*

⁵ *Id.*

Handicap Parking	17.20.10	2% of parking spaces=.5 spaces	1 space	Complies
Off-Street Loading	17.24.02	10X45 if routine deliveries	Loading area on east side	Complies, trash pickup area needs cross easement to operate effectively
Non-Residential Setbacks	17.16.040B	Maximum 20ft from ROW	Virginia and Colorado exceed requirement	Complies with special designation by Planning commission
Open Space	17.16.070B	25% or 20% if exceeds density of materials	23.5%	Complies with PC 20% allowance
Building Height	17.16.060	45 ft wall, 55 ft ridgeline	35 foot wall and ridgeline	Complies

12. The site is located in the Regional Commercial Planned Unit Development District and the Eating and Entertainment Overlay District.⁶ The use of specialty retail is a permitted principal use because it occupies at least 60% of the first floor of the structure.⁷

13. The accessory uses are customarily incidental and accessory to the principal use, thus they are part of those percentages.⁸ The code requires that the floor area associated with any one principal permitted use cannot be greater than 75%, without special review. Thus, because the use exceeds 75% special review is required.⁹

If the Site Plan is approved, the approval must also include a special use permit for the above mentioned special review use. The special use permit hearing is part of the Site Plan public hearing.¹⁰

14. The open space requirement is 25% unless it is reduced by a finding of the Planning Commission that the landscaping substantially exceeds minimum standards.¹¹ Thus, the Planning Commission will need to find that the applicant substantially exceeded the minimum standards.

⁶ §17.12.050.A.

⁷ §17.12.050.A.2

⁸ §17.12.040.B.2

⁹ §17.12.040.A.

¹⁰ §17.35.020 (Procedure for Special Use Permit)

¹¹ §17.16.070.B.3

Master Plan Compatibility

15. The detailed land use designation of this location is for eating and entertainment.¹² The development's predominant use is consistent with this land use designation.

16. Performance standards incorporated into quantitative standards, covered by other staff reports, or in the Zoning Code section were omitted.

Recommendations and Conditions

- Staff recommends approval of the site plan, and issuance of the special use permit.
- By Permit, the applicant obtains a cross access agreement.
- The applicant consents to tie Virginia Avenue City owned landscaping into their irrigation system with an agreement for the City to reimburse reasonable water costs annually.
- The applicant dedicates the Colorado Blvd sidewalk and East Virginia Avenue 5ft to the City.
- The applicant dedicates the corner sign easement to the City.

¹² *Id* at 23, Figure 4

City of Glendale



Review, comments and recommendations for the Smoking Gun of materials submitted electronically to the Public Works Department 24DEC14

To: Chuck Line
CC: Gene Hazlett; Carrie Powers; Kevin Brown; Chris Roozing; Donaldo Visani
From: Joshua Bertrand
Page: 1 of 4
Date: 09JAN15
Project Name: The Smoking Gun

The following are the review comments and recommendations for the electronically submitted prints titled *PFSDP Submittal Drawings – The Smoking Gun* redevelopment by the Glendale Public Works Department. No utility report was included. Please submit questions or comments to the Director of Public Works, Josh Bertrand.

General comments and recommendations.

- 1) The Department of Public Works respectfully requests a copy of the soils report when the document is made available.
- 2) The project ought to use "Heavy Duty" asphalt or concrete on access drives for trash truck and/or delivery trucks, with a recommended thickness of 8". The details or specifications of asphalt and/or concrete should be included.
- 3) The subsequent plans should include any utility easements on the property.
- 4) No irrigation system is designed yet.
- 5) The sizes and types of the existing utilities in E. Virginia Ave. and S. Colorado Blvd. should be shown on the plans when appropriate.
- 6) Please note that all work along S. Colorado Blvd. will require an access permit from CDOT and additional coordination with the City of Denver.
- 7) Please include the limits of disturbance on the plans (including drive pan and curb/gutter work on S. Colorado Blvd.).

Specific Sheet review, comments and recommendations.

- 1) Sheet COVER SHEET SDP-1/12
 - a) General Notes corrections:
 - i) Please replace the Fire Department Contact with Mr. Gene Hazlett and correct phone #303-639-4502.
 - ii) Please update the editions of the Glendale Building Code as we are no longer using 1997 & 1999 editions.
- 2) Sheet LAND PLAT SURVERY SDP-2/12
 - a) No comment.
- 3) Sheet EXISTING CONDITIONS SDP-3/12
 - a) The E. Virginia Ave. (in-ground) lift stations controls should be shown and identified.
- 4) Sheet SITE PLAN SDP-4/12
 - a) The striping in the S. Colorado Blvd. access drive should reflect a Right Turn Only movement onto Northbound S. Colorado Blvd.
 - b) Please add a Stop Sign (R1-1) and Right Turn Only (R3-5R) to the access onto S. Colorado Blvd.
 - c) Please consider installing a CDOT Type II or Type III concrete drive pan to the access onto S. Colorado Blvd. CDOT may require a concrete drive pan for access onto S. Colorado Blvd.
 - d) The access onto S. Colorado Blvd. will require a CDOT access permit.
 - i) Glendale Public Works recommends showing the existing drive pan to be demolished and relocated to the north.
 - e) The proposed sidewalk chase should be shown on S. Colorado Blvd. and detail provided.
 - f) A hard surface (ADA compliant) should be installed to temporarily connect the proposed sidewalk to the existing truncated dome at the corner of S. Colorado Blvd. and E. Virginia Ave.
 - g) The area marked as "Trash Enclosure" is shown as "Transformer Location" on sheet 5. Please make sure there is adequate space for both facilities.
- 5) Sheet UTILITY PLAN SDP-5/14
 - a) The responsible party for removing the overhead utility lines should be identified and shown in the plan set.
 - b) Please consider installing a CDOT Type II or Type III concrete drive pan to the access onto S. Colorado Blvd. CDOT may require a concrete drive pan for access onto S. Colorado Blvd.
 - c) The proposed sidewalk chase should be shown on S. Colorado Blvd. and detail provided.
 - d) Please consider installing a new 4" isolation valve at the connection to the existing fire main, or relocating the existing valve on the property within 5' of the Right of Way.

- e) The gravity flow line arrows for the sanitary system are incorrect. All flows on S. Colorado Blvd. converge at E. Virginia Ave., to the lift station, force main and then gravity flows to the East.
 - f) The existing lift station controls should be shown and relocated on the property north of the proposed side walk.
 - i) Electrical power for the lift station controls does not need to be relocated.
 - g) The Glendale Public Works recommends connecting the sanitary service to the existing stub on the Southeast corner of the property.
 - h) The sizes and types of the 4" and 6" water mains on E. Virginia Ave. and S. Colorado Blvd. should be shown on the plans where appropriate.
 - i) The size and type of the 8" sanitary main on E. Virginia Ave. should be shown on the plans where appropriate.
 - j) The location of the water meter pit should be shown.
 - k) The area marked as "Transformer Location" is shown as "Trash Enclosure" on sheet 4. Please make sure there is adequate space for both facilities.
- 6) Sheet GRADING PLAN SDP-6/13
- a) Please consider installing a CDOT Type II or Type III concrete drive pan to the access onto S. Colorado Blvd. CDOT may require a concrete drive pan for access onto S. Colorado Blvd.
 - b) The proposed sidewalk chase detail should be provided. Please ensure CDOT finds a chase drain to discharge stormwater to Colorado Blvd an acceptable practice.
 - c) Please provide a detail for the Water Quality Swale, and each of the curb cuts leading to the WQ swale.
 - d) Please do not have the stormwater from the site discharge across the sidewalk on E. Virginia Ave. Please consider adding a swale instead of a hill and connecting it to the WQ swale.
 - e) Care should be taken not to discharge stormwater on north side of the site onto the adjacent property.
 - i) A 3 foot concrete pan along the North property line may be required to convey the drainage to the West and South towards S. Colorado Blvd.
 - f) Please show where roof drains discharge.
 - g) Please add limits of construction and necessary BMPs to control pollutants to the grading plan, or add an erosion control plan.
- 7) Sheet BASEMENT FLOOR PLAN SDP-7/13
- a) No comment.
- 8) Sheet FIRST FLOOR PLAN SDP-8/13
- a) Please confirm that there is adequate space in the proposed trash enclosure for a trash service and electrical transformer access.
 - b) The enclosure should be covered and sloped so stormwater does not enter the enclosure.
 - c) The enclosure should drain to the sanitary service.

9) Sheet ELEVATIONS SDP-9/13

- a) No comment.

10) Sheet LANDSCAPE PLAN SDP-11/13

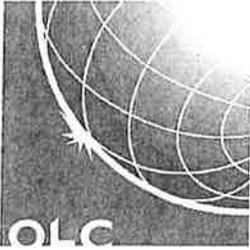
- a) Please provide a detail for the sidewalk chase.
- b) The water quality swale should be shown and defined.
 - i) Additionally, please include a profile/cross section of the water quality swale.
- c) The existing in-ground lift station controls should be relocated on the property north of the proposed sidewalk into the landscaped area.
 - i) Electrical power to the lift station controls does not need to be relocated.
- d) Please show the water meter pit on the drawing.

11) Sheet ELECTRICAL SITE PLAN E0.01

- a) Please consider adding more illumination to the north side of the site.

12) Sheet LIGHTING CUTSHEETS E0.02

- a) No comment.



Dec 24, 2014

**OHLSON LAVOIE
COLLABORATIVE**

616 E SPEER BLVD
DENVER, COLORADO
80203-4213

T: 303.294.9244

F: 303.294.9440

www.olcdesigns.com

Chuck Line
Zoning Administrator
City of Glendale
950 South Birch Street
Glendale, CO 80246
T: (303) 639-4601
cline@glendale.co.us

Re: Preliminary and Final Site Development Plan Application
For: For The Smoking Gun
492 S Colorado Blvd
Glendale, Colorado 80246

Dear Chuck,

I am submitting this application on behalf of the applicant, The Smoking Gun Land Company LLC, for the development of a new structure on 492 South Colorado Boulevard in Glendale, Colorado. We are seeking concurrent review pursuant to Article 17.32.030, Preliminary Site Plan Development and 17.32.050, Final Dimensioned Site Development Plan (PFSDP), of the City of Glendale Zoning Code, please find the following required documentation:

1. One 24 x 36 set of the PFSDP plans
2. One 11x17 set of the same (a PDF of these will be sent via email, separately)
3. Check in the amount of \$2,500 for Planning Review Fees
4. Application Information (below)

We are respectfully submitting these documents for inclusion in the next Planning Commission's agenda.

Please contact me at 303.887.0152 or via email (dvisani@olcdesigns.com) if you have any questions.

Sincerely,

OHLSON LAVOIE COLLABORATIVE
Architecture | Aquatics | Interiors | Technology

Donaldo H. Visani, AIA
Senior Principal

Attachments

ARCHITECTURE
AQUATICS
INTERIORS
TECHNOLOGY

Application Information:

Project Basics:

The project consists of a new structure to replace the existing building on 492 S Colorado Boulevard, which has been recently demolished due to the improvements on to the intersection at Virginia Avenue and Colorado Boulevard. The proposed structure and associated site improvements is proposed to be built on 492 S Colorado Boulevard

The property is currently zoned "Regional Retail and Commercial PUD" and is within the "Eating and Entertainment Overlay" as detailed in the City of Glendale Zoning Code. For further project information, please see the attached drawings, specific point-by-point response to zoning code article requirements and our responses to written staff comments.

Attached Drawings:

Sheet Number	Sheet Name	Comments
SDP - 1/12	COVER SHEET	Cover
SDP - 2/12	LAND PLAT SURVEY	Updated Survey
SDP - 3/12	EXISTING CONDITIONS	Existing Survey
SDP - 4/12	CIVIL SITE PLAN	Civil
SDP - 5/12	UTILITY PLAN	Civil
SDP - 6/12	GRADING PLAN	Civil
SDP - 7/12	BASEMENT PLAN	Architectural (Reference)
SDP - 8/12	FIRST FLOOR PLAN	Architectural (Reference)
SDP - 9/12	ELEVATIONS	Architectural (Reference)
SDP - 10/12	ELEVATIONS	Architectural (Reference)
SDP - 11/12	LANDSCAPE PLAN	Landscape
SDP - 12/13	PHOTOMETRIC PLAN	Electrical

Specific Responses to Article 17.32.030 (Preliminary Site Plan Development):

- A. The location and name of the proposed development;
Location: 492 S Colorado Blvd, Glendale, CO
Name: The Smoking Gun
- B. The names, addresses and phone numbers of the landowners, developers and designers of the development;

Landowner: Anthony Marino Family Trust
Contact: Robert J. Bruce, Esq.
Lawlis & Bruce, LLC
1875 Lawrence Street, Suite 750
Denver, Colorado 80202
(303) 573-5498 phone
(303) 573-5537 fax
robertbruce@lawlisbruce.com

Developer: The Smoking Gun Land Company LLC (and Leasor)
Contact: Deborah A. Matthews, Manager
490 South Colorado Boulevard

Glendale, CO 80246
(303) 916-6707
debbie@westernwines.net

Designers: Ohlson Lavoie Collaborative
Contact: Donaldo H. Visani, AIA, Architect
616 E Speer Blvd
Denver, CO 80203
(303) 294-9244
dvisani@olcdesigns.com

- C. Information regarding the physical characteristics of the surrounding area and the developments within three hundred (300) feet of all property boundary lines;
See submitted drawings
- D. The size of the proposed development site and the character, and approximate location and density of all residential and nonresidential structures including the actual shape, proportion and dimensions of the site to be built upon, the size, shape, height and location of all buildings or other structures to be erected, altered or moved and of any building or other structure on the property;
See submitted drawings.
- E. Existing land uses, pedestrian amenities, ingress and egress points, and landscaping within at least three hundred (300) feet of all property boundary lines;
See submitted drawings.
- F. Adjacent streets and proposed points of access;
See submitted drawings.
- G. The existing topographic character of the land and existing natural features;
See submitted drawings.
- H. The property lines and names of adjoining properties;
See submitted drawings.
- I. Location and descriptions of any existing utilities, easements, leases, common ownership or other encumbrances on the property;
See submitted drawings.
- J. Existing and proposed land use and the approximate location, height, massing and scale of proposed buildings and structures in relationship to the structures on abutting lots;
See submitted drawings.
The property is within the Regional Retail and Commercial PUD (Eating and Entertainment Overlay). The existing and proposed land use is the same: Dining and Drinking Establishment (w/ dancing and entertainment). Maximum height will be at or under 45' for walls or structures and 55' to ridgelines.
- K. The approximate location, number of spaces, and internal circulation of parking areas or structures and indication as to whether the applicant is interested in reducing the minimum parking requirements through the use of transportation demand management techniques;
See submitted drawings
- L. Signed agreement to pay all development review costs;
To be provided by Developer.
- M. North arrow and graphic scale;
See submitted drawings.
- N. A general indication of the expected schedule of development indicating:
 - 1. The approximate date when construction of the project can be expected to begin,
April 15, 2015

2. The stages in which the project will be built;
Construction 04/15/15 - 11/15/15
Virginia Improvements TBD

- O. Documentation showing how all general design and development standards will be met, including street edge treatment, pedestrian amenities, compatibility in site design with abutting uses, open space, usable open space, and parking;
See submitted drawings
- P. Documentation confirming that the applicant has legally sufficient interest in the property proposed for development, or is the duly appointed agent of such a person;
NA or previously submitted
- Q. Minutes and description of notice for the neighborhood meeting or a written waiver by the Zoning Administrator.
By others

Specific Responses to Article 17.32.050 (Final Dimensioned Site Plan):

- A. The final anticipated topography of the area involved;
See submitted drawings.
- B. The existing and intended uses of all buildings and structures;
See submitted drawings.
The property is within the Regional Retail and Commercial PUD (Eating and Entertainment Overlay). The existing and proposed land use is the same: Dining and Drinking Establishment (w/ dancing and entertainment). Maximum height will be at or under 45' for walls or structures and 55' to ridgelines.
- C. The dimensions of all improvements including but not limited to: structures, yards, open spaces, pedestrian amenities, circulation patterns both vehicular and non-vehicular;
See submitted drawings.
- D. Final building elevations and their relationship to abutting properties;
See submitted drawings.
- E. A traffic plan and study showing the
1. location of all parking and loading areas or structures,
See submitted drawings.
 2. along with the number of spaces,
See submitted drawings.
 3. circulation patterns both vehicular and non vehicular,
See submitted drawings.
Development standards include: AASHTO Green Book - A Policy on Geometric Design of Highways and Streets, 6th Edition, 2011 and the City of Glendale Zoning Code.
 4. traffic impact report,
Traffic patterns are expected to remain unchanged. One curb cut on Colorado Blvd to remain. The Developer/Leasor will be granted conditional vehicle access to the abutting property (490 S Colorado Blvd) by its property Owner. The Applicant will coordinate with the City of Glendale and others, as needed, to finalize the design of any off-site improvements on City property.
 5. the location and extent of any land or right-of-way to be dedicated to the city,
See submitted drawings.
 6. along with a CDOT access permit if required;

CDOT Access Permit Application will be submitted based on change of use to retail.

- F. A detailed landscape plan showing dimensioned sidewalks, street edge treatment, landscaping (all plans shall depict material sizes no larger than installation size plus one (1) year of growth), pedestrian amenities, location and pattern of exterior lighting, the location of fire hydrants, location of trash receptacles, outdoor storage, utilities and screening materials to be used as well as the design of and intended use of all open space;
See submitted drawings.
- G. Utility study and plan showing the proposed utilities including sewers, both sanitary and storm, gas lines, waterlines, and electrical lines showing proposed connections to existing utility systems;
See submitted drawings.
- H. Certified survey of the property sealed by a registered land surveyor;
A Land Survey Plat (LSP) as defined by Colorado Revised Statutes (38-51-102) will be prepared. The survey will be in conformance with minimum standards as defined by CRS-38-51-106.
- I. North arrow and graphic scale;
See submitted drawings.
- J. Other documents or materials required as part of the preliminary site development plan approval;
Not applicable.
- K. If the final site development plan's location is within the Glendale urban renewal plan area, the application shall include the Glendale Economic Redevelopment Authority's comment; and recommendations. (Ord.2007-14§1 (part); Ord.2005-7§1 (part); Ord.1997-13§1(part))
Not applicable.

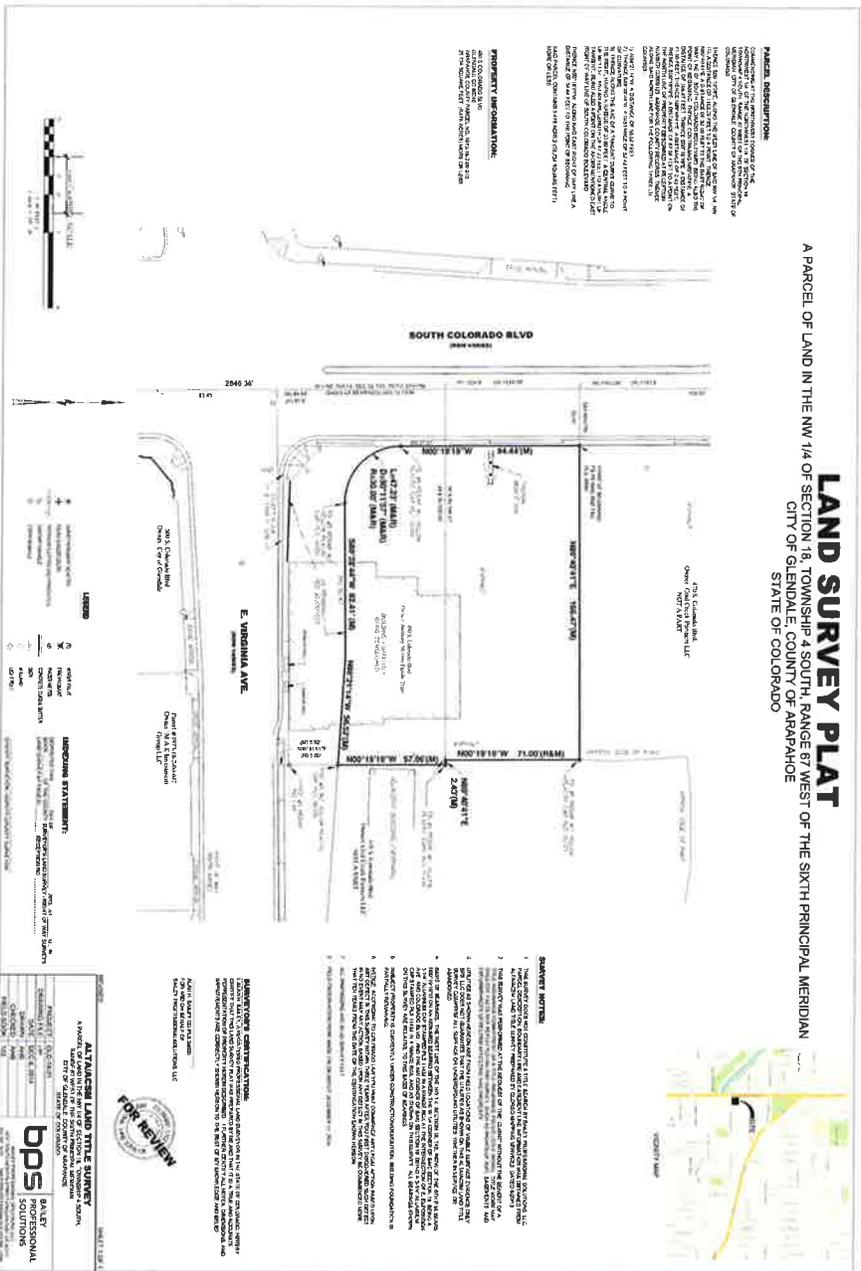
Compliance with Zoning Code

- A. The following table is summary of the attributes for the site plan regarding the dimensional and quantitative performance standards required in the code.

Attribute	Code Sec	Requirement	Submittal	Complies?
Parking Spaces	17.40.040	1 per 250 sq/feet	29 spaces	Complies
Parking Stall Size	17.20.070	8.5 X18, Min	8.5 X18	Complies
Aisle	17.20.10	22.5', Min	22.5'	Complies
	17.20.10	2% of parking spaces	1 Van	Complies
Off-Street Loading	17.24.02	10X45, if routine deliveries	See plans	Complies
Non-Residential Setbacks	17.16.040B	Maximum 20ft from ROW	Colorado >75' Virginia > 72'	Variance requested
Open Space	17.16.070B	25% minimum. 20% if exceeds density of materials	Approx 23.0%	Variance requested
Building Height	17.16.060	45 ft wall, 55 ft ridgeline	35' to parapet	Complies

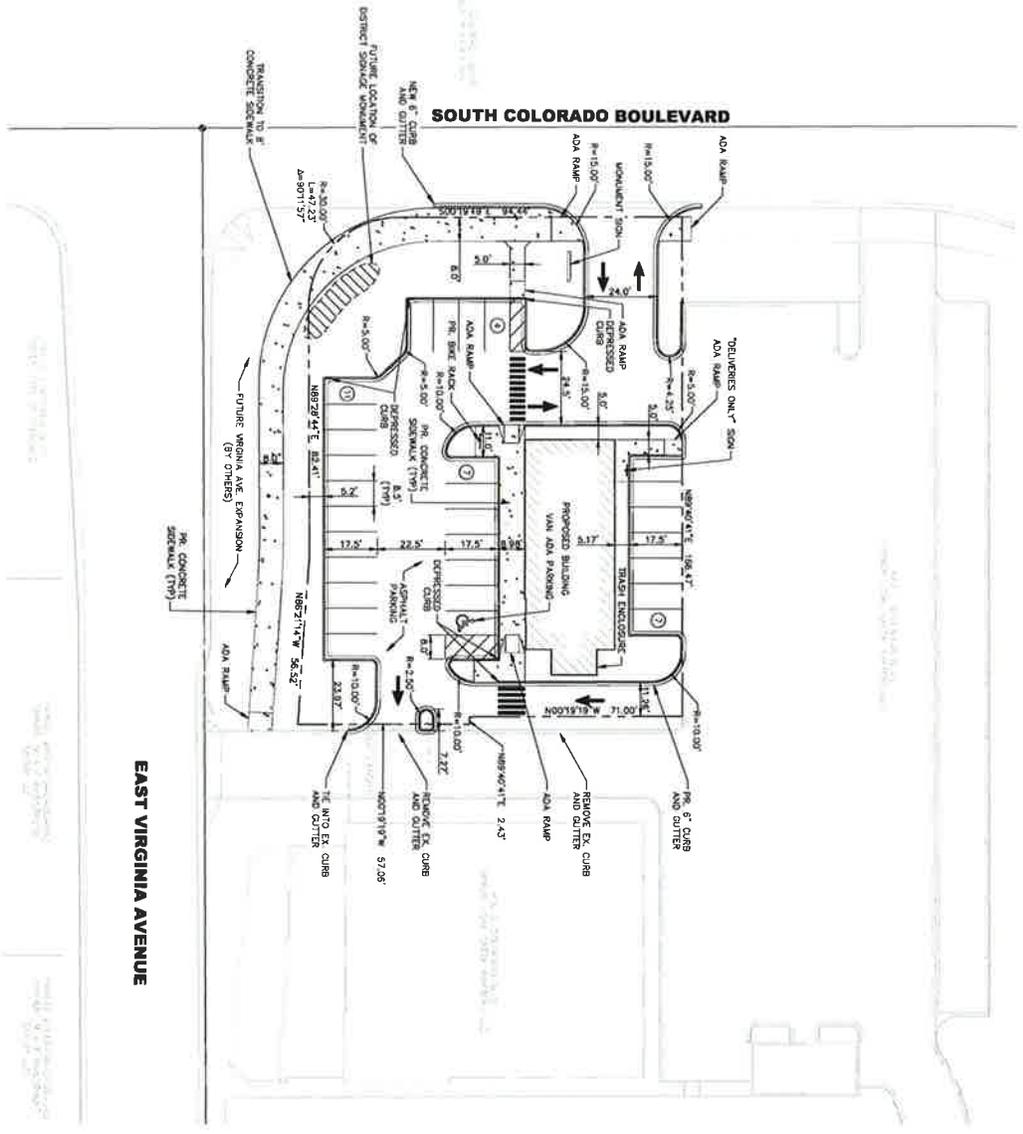
- B. The applicant will provide detailed information about the sidewalk connection on the ingress/egress area on Colorado Blvd. Provided concept on Site Plan, will update details pending CDOT comments.
- C. The applicant consents to tie Virginia Avenue City owned landscaping into their irrigation system with an agreement for the City to reimburse reasonable water costs annually.
- D. The applicant consents to dedicate the sidewalk on the Colorado Boulevard side to the City.

LAND SURVEY PLAT
A PARCEL OF LAND IN THE NW 1/4 OF SECTION 18, TOWNSHIP 4 SOUTH, RANGE 87 WEST OF THE SIXTH PRINCIPAL MERIDIAN
CITY OF GLENDALE, COUNTY OF ARAPAHOE
STATE OF COLORADO





Preliminary & Final Site Development Plan



LEGEND

ROW/PROPERTY LINE	---
CONTIGUOUS	---
PROPERTY BOUNDARY	---
EASEMENT	---
PROP. WATER MAIN	— —
PROP. FIRE HYDRANT	— —
PROP. SANITARY SEWER MAIN	— —
PROP. STORM DRAIN	— —
PROP. STORM DRAIN INLET	— —
EX. GAS MAIN	— —
EX. WATER MAIN	— —
EX. WATER VALVE	— —
EX. FIRE HYDRANT	— —
EX. SANITARY SEWERS	— —
EX. STORM DRAIN	— —
EX. STORM DRAIN INLET	— —
EX. LIGHT/POWER POLE	— —
EX. UNDERGROUND ELECTRIC	— —
EX. OVERHEAD ELECTRIC	— —
EX. UNDERGROUND TELEPHONE	— —
PARKING SPACE COUNT	①

UNCC
 CALL BEFORE
 YOU DIG
 811
 OR
 1-800-922-1987
 Utility Notification
 Center of Colorado

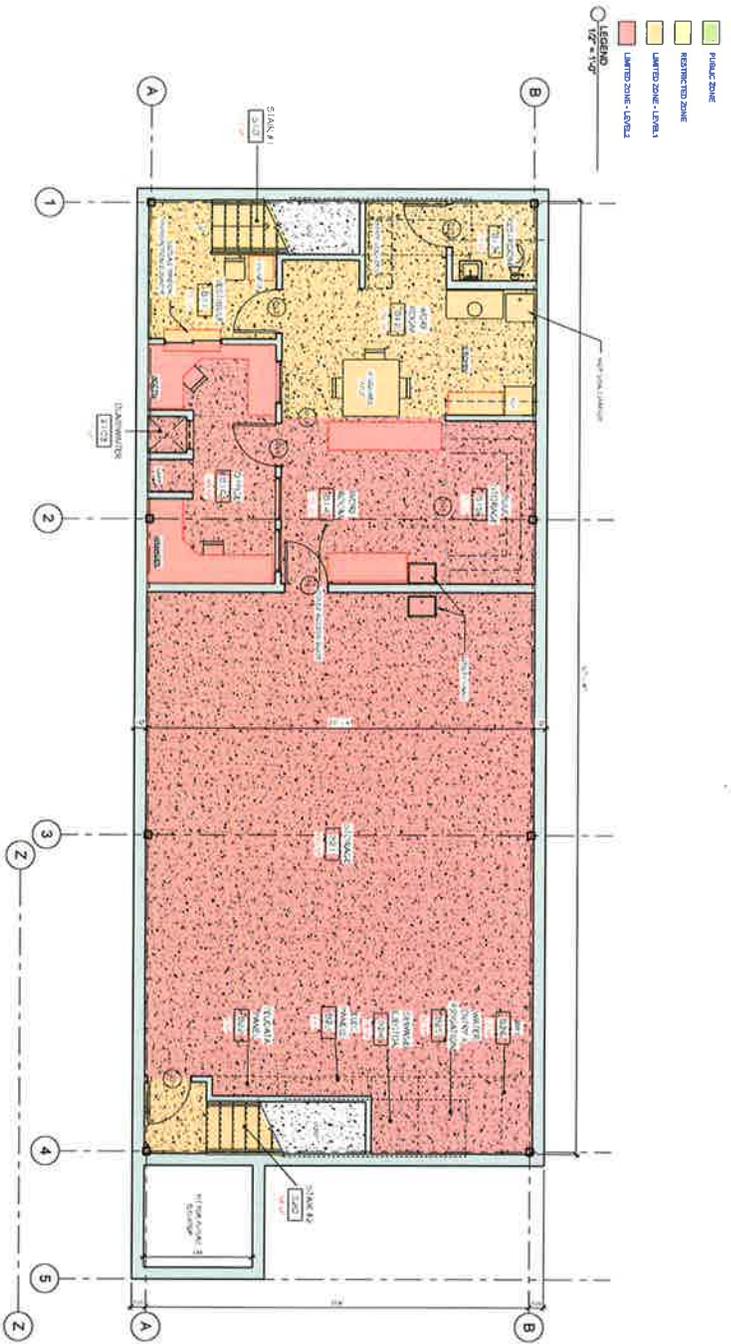


Calibre
 Construction Management

DATE	DESCRIPTION
11/15/2011	PRELIMINARY SITE PLAN
11/15/2011	FINAL SITE PLAN
11/15/2011	CONSTRUCTION PERMITS
11/15/2011	CONSTRUCTION
11/15/2011	AS-BUILT

BASEMENT FLOOR PLAN
THE SMOKING GUN

① BASEMENT - SGP
 1/4" = 1'-0"



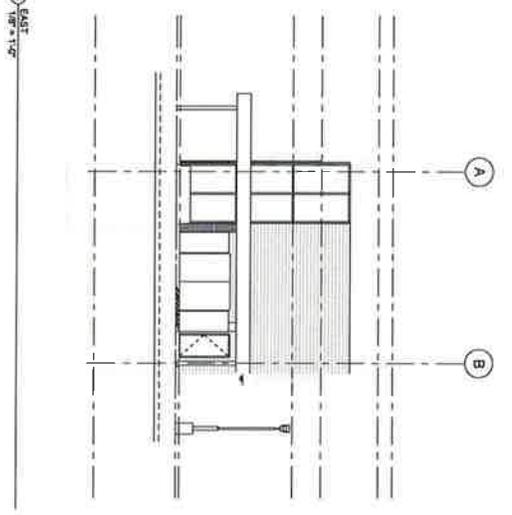
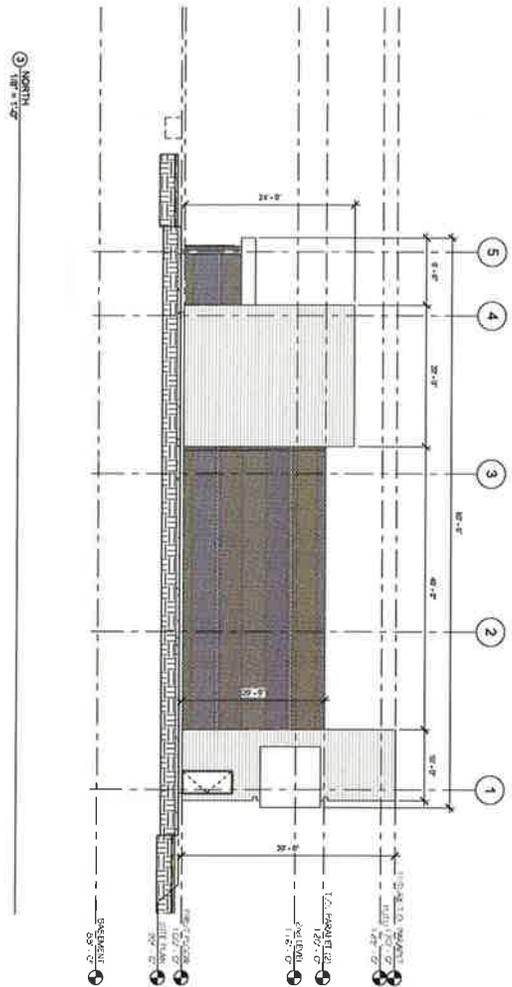
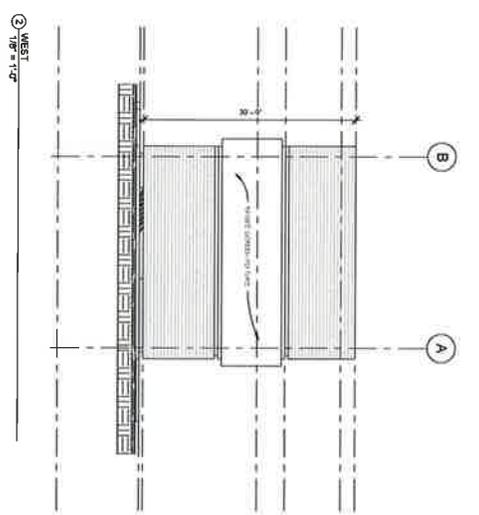
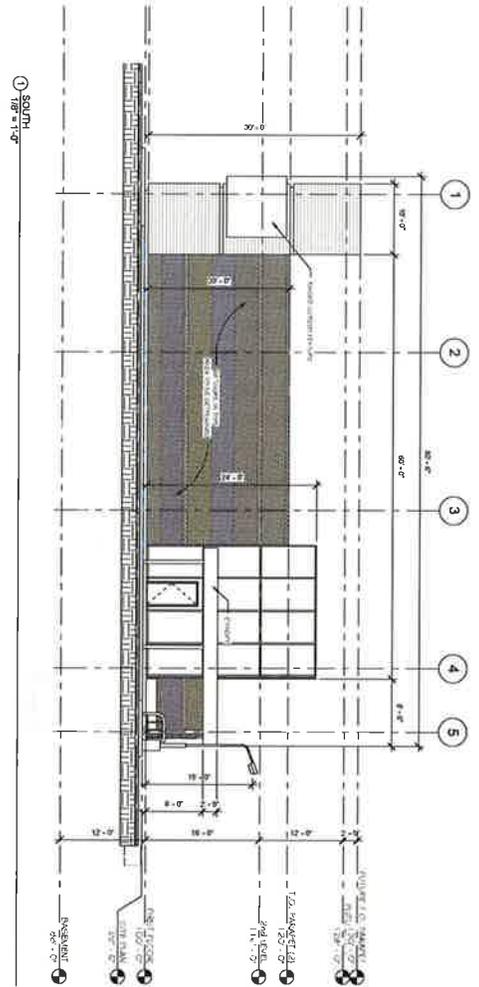


THE SMOKING GUN
 RESTAURANT & BAR
 1000 15th St. N
 Minneapolis, MN 55412
 (612) 338-7113
 www.thesmokinggun.com

DATE	DESCRIPTION
10/15/13	ISSUED FOR PERMITS
10/15/13	ISSUED FOR CONSTRUCTION
10/15/13	ISSUED FOR RECORD
10/15/13	ISSUED FOR AS-BUILT
10/15/13	ISSUED FOR ARCHIVE

SGP-713

ELEVATIONS
THE SMOKING GUN





 THE UNIVERSITY OF NORTH CAROLINA
 SCHOOL OF ARCHITECTURE
 ARCHITECTURAL SERVICES
 100 SOUTH CAMPUS DRIVE
 CHAPEL HILL, NC 27514
 TEL: 919.974.2100
 WWW.SOA.UNCED.EDU

DATE: 11/13/2013
 DRAWN BY: J. B. BROWN
 CHECKED BY: J. B. BROWN
 PROJECT: THE SMOKING GUN
 SHEET: SDP - 8/13

EXHIBIT 2

**MINUTES OF THE PLANNING COMMISSION
CITY OF GLENDALE, COLORADO**

Tuesday, January 13, 2015

7:00 P.M.

City Hall

Call to Order and Roll Call. Chair, Michael Dunafon, called the meeting to order. Members present were Storm Gloor, Scott Norquist, Michael Dunafon, Tyler Mintz, Elizabeth Bonney, and Krista Warnick. Paula Bovo was absent. Chuck Line, Deputy City Manager, was also present.

1. Preliminary Staff Matters. There were no staff matters.
2. Approval of the Agenda. Commissioner Gloor made a motion to approve the agenda. The motion was seconded by Commissioner Mintz. There was no discussion, and the motion passed unanimously.
3. Approval of Minutes of the December 9, 2014 Meeting. Commissioner Norquist motioned to approve the minutes of the December 9, 2014 meeting. The motion was seconded by Commissioner Warnick. There was no discussion, and the motion passed unanimously.
4. Public Comments. There were no public comments.
5. Public Hearing for Concurrent Preliminary and Final Site Plan for Smoking Gun at 492 S. Colorado Blvd. Chair, Michael Dunafon, opened the public hearing, recused himself, and noted Commissioner Gloor would chair the public hearing. Commissioner Gloor introduced Chuck Line. Mr. Line went over the site plan commenting on property boundary lines, future street plans, sidewalks, and landscaping. He went over the use in the eating, entertainment, and overlay district and noted staff recommends approval with conditions.

Mr. Line introduced Donaldo Visani, architect with Olhson Lavoie Collaborative. Mr. Visani went over the design and use of the building. He and Chuck Line answered questions from the Planning Commission. Mr. Line went over the recommendations. Commissioner Gloor closed the public hearing and entertained a motion. Commissioner Norquist motioned to approve the Concurrent Preliminary and Final Site Plan for Smoking Gun at 492 South Colorado Blvd. with staff recommendations. The motion was seconded by Commissioner Mintz. There was no discussion, and the motion passed unanimously. Commissioner Gloor then turned the meeting over to Chair, Michael Dunafon.
6. Public Comments. There were no public comments.
7. Other Business. There was no other business.

**MINUTES OF THE PLANNING COMMISSION
CITY OF GLENDALE, COLORADO**

Tuesday, January 13, 2015

7:00 P.M.

City Hall

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6. Public Comments. There were no public comments.
7. Other Business. There was no other business.

EXHIBIT 3

Agenda
Glendale City Council
Regular Meeting
February 3, 2015

PLEASE TURN OFF ALL CELLULAR TELEPHONES AND/OR AUDIBLE PAGERS

4/6/2016 5:35 PM

4:30 p.m. Study Session

7:00 p.m. Regular Meeting

Pledge of Allegiance

1. Call to Order and Roll Call
2. Approval of Agenda
3. Public Comments (three-minute-per-person time limit)
4. Consent Item
 - a. Minutes of the January 6, 2015 Regular Meeting – Tab A
 - b. Minutes of January 20, 2015, Regular Meeting – Tab B
 - c. Renewal of Hotel and Restaurant Liquor License for Applebee's Neighborhood Grill and Bar, 410 South Colorado Blvd. – Tab C (Chief Haskins)
 - d. Renewal of Retail Liquor License for YKim Corporation, d/b/a Cherri Plaza Liquors, 4611 & 4605 East Mississippi Avenue – Tab D (Chief Haskins)
 - e. Renewal of Tavern Liquor License for JP Colorado, LLC d/b/a World of Beer, 660 South Colorado Blvd. – Tab E (Chief Haskins)
 - f. Renewal of Optional Premises License for Scrum Enterprises, Inc. d/b/a Scrum Enterprises, 4599 East Tennessee Avenue – Tab F (Chief Haskins)
 - g. Renewal of Hotel and Restaurant Liquor License for Zhuo & Chen Corp. d/b/a Ming's Dynasty Chinese Restaurant at 4251 East Mississippi Avenue – Tab G – (Chief Haskins)
5. New Manager's Registration, Neill Boyd, JP Colorado LLC d/b/a World of Beer, 660 South Colorado Blvd. – Tab H (Chief Haskins)
6. Public Hearing for Concurrent and Final Site Development Plan and Special Use Permit, Smoking Gun, 492 South Colorado Blvd. – Tab I (Chuck Line)
7. Discussion Item
 - a. Review the Next City Council Meeting Agenda for March 3, 2015 – Tab J

8. On-Going Updates
 - a. Denver Regional Council of Governments – DRCOG (Paula Bovo, Doris Rigoni)
 - b. Colorado Municipal League – CML (Paula Bovo, Doris Rigoni)
 - c. Transportation Solutions (Jeff Allen)
 - d. Regional Transportation District – RTD (Scott Franssen)
 - e. Green Committee (Dario Katardzic)
 - f. Infinity Park (Linda Cassaday)
 - g. Glendale 180 (Mike Gross)
 - h. Technology & Communications (Paula Bovo, Dario Katardzic)
9. Department Reports
10. Public Comments (three minute per person time limit)
11. Council Reports
12. Other Business
13. Items for Press Release
14. Adjournment

Memo



To: Glendale Planning Commission
From: Chuck Line, Deputy City Manager
CC: Jerry Peters, City Manager and Jeff Springer, City Attorney
Date: January 9, 2015
Re: Concurrent Preliminary and Final Site Development Plan for Smoking Gun at 492 S Colorado Blvd.

Introduction

1. 492 S Colorado Blvd, dba Smoking Gun, has submitted a Site Plan for the redevelopment of the corner of Colorado Blvd and East Virginia Avenue. The applicant has submitted all required documents and the fees.
2. The Site Plan is being reviewed concurrently, both preliminary and final site plans.
3. The overall site plan's principal permitted uses consist of retail sales. However, because one principal permitted use for the site plan is more than the maximum of 75%, special review is required.
4. The predominant use of retail sales is consistent with the Land Use Master Plan.

Analysis

5. The site plan has three points of cross access through 490 S Colorado Blvd, which allows the site to have access to other traffic than only northbound on S Colorado Blvd. This site plan also has trash access located off site on the 490 Site. Currently, the applicant does not have a written agreement with the adjacent property owner regarding this cross access, which would be required in a form acceptable to the City prior to issuance of a building permit.
6. The trash enclosure is moderately proximate to the entrance to the adjacent use, this necessitates that a cover will need to be installed on the enclosure, one that limits the visual harm of the dumpster and improves water quality.

7. The landowner will need to dedicate the right-of-way for the Colorado Blvd sidewalk proposed, and 5ft of landscaping on East Virginia Avenue to accommodate a future sidewalk. The Virginia Avenue right-of-way dedication can be used by the applicant for landscaping with an agreement with the City until such time it is needed for a sidewalk. Furthermore, a corner treatment easement will need to be dedicated to the City for a future corner monument.

Procedure

8. The site plan was submitted for concurrent review.¹ Concurrent review allows both the Preliminary and Final Site Development Plans to be considered at the same time, without the standard two step process.
9. The Planning Commission's public hearing must be properly noticed so that the public may have the opportunity to attend and participate in the hearing. The Zoning Code requires that the meeting is noticed by regular mail fifteen (15) days and by posting the property seven (7) days prior to the hearing.² Both mail and posting notice were completed for the Planning Commission hearing.
10. At the public hearing, if it is necessary to obtain additional public comment or information, the Planning Commission may continue the hearing.³ Upon completion of the public hearing, the Planning Commission shall issue its report to the City Council within sixty-five (65) days.⁴ The report shall either recommend approval, with or without conditions, or disapproval, with a written basis prepared by the Zoning Administrator.⁵

Compliance with Zoning Code

11. The following table is summary of the attributes for the site plan regarding the dimensional and quantitative performance standards required in the code.

Attribute	Code Sec	Requirement	Submittal	Complies?
Parking Spaces	17.40.040	1 per 250 sq/feet= 24	29 spaces	Complies
Parking Stall Size	17.20.070	8.5 X18 (plans show measurement to curb of 17.5ft, but with a 6 inch overhang it is 18)	Stall and isle meets minimum requirement	Complies with overhang

¹ §17.32.026

² §17.32.060.F

³ §17.32.070.

⁴ *Id.*

⁵ *Id.*

Handicap Parking	17.20.10	2% of parking spaces=.5 spaces	1 space	Complies
Off-Street Loading	17.24.02	10X45 if routine deliveries	Loading area on east side	Complies, trash pickup area needs cross easement to operate effectively
Non-Residential Setbacks	17.16.040B	Maximum 20ft from ROW	Virginia and Colorado exceed requirement	Complies with special designation by Planning commission
Open Space	17.16.070B	25% or 20% if exceeds density of materials	23.5%	Complies with PC 20% allowance
Building Height	17.16.060	45 ft wall, 55 ft ridgeline	35 foot wall and ridgeline	Complies

12. The site is located in the Regional Commercial Planned Unit Development District and the Eating and Entertainment Overlay District.⁶ The use of specialty retail is a permitted principal use because it occupies at least 60% of the first floor of the structure.⁷

13. The accessory uses are customarily incidental and accessory to the principal use, thus they are part of those percentages.⁸ The code requires that the floor area associated with any one principal permitted use cannot be greater than 75%, without special review. Thus, because the use exceeds 75% special review is required.⁹

If the Site Plan is approved, the approval must also include a special use permit for the above mentioned special review use. The special use permit hearing is part of the Site Plan public hearing.¹⁰

14. The open space requirement is 25% unless it is reduced by a finding of the Planning Commission that the landscaping substantially exceeds minimum standards.¹¹ Thus, the Planning Commission will need to find that the applicant substantially exceeded the minimum standards.

⁶ §17.12.050.A.

⁷ §17.12.050.A.2

⁸ §17.12.040.B.2

⁹ §17.12.040.A.

¹⁰ §17.35.020 (Procedure for Special Use Permit)

¹¹ §17.16.070.B.3

Master Plan Compatibility

15. The detailed land use designation of this location is for eating and entertainment.¹² The development's predominant use is consistent with this land use designation.

16. Performance standards incorporated into quantitative standards, covered by other staff reports, or in the Zoning Code section were omitted.

Recommendations and Conditions

- Staff recommends approval of the site plan, and issuance of the special use permit.
- By Permit, the applicant obtains a cross access agreement.
- The applicant consents to tie Virginia Avenue City owned landscaping into their irrigation system with an agreement for the City to reimburse reasonable water costs annually.
- The applicant dedicates the Colorado Blvd sidewalk and East Virginia Avenue 5ft to the City.
- The applicant dedicates the corner sign easement to the City.

¹² *Id* at 23, Figure 4

City of Glendale



Review, comments and recommendations for the Smoking Gun of materials submitted electronically to the Public Works Department 24DEC14

To: Chuck Line
CC: Gene Hazlett; Carrie Powers; Kevin Brown; Chris Roozing; Donaldo Visani
From: Joshua Bertrand
Page: 1 of 4
Date: 09JAN15
Project Name: The Smoking Gun

The following are the review comments and recommendations for the electronically submitted prints titled *PFSDP Submittal Drawings – The Smoking Gun* redevelopment by the Glendale Public Works Department. No utility report was included. Please submit questions or comments to the Director of Public Works, Josh Bertrand.

General comments and recommendations.

- 1) The Department of Public Works respectfully requests a copy of the soils report when the document is made available.
- 2) The project ought to use "Heavy Duty" asphalt or concrete on access drives for trash truck and/or delivery trucks, with a recommended thickness of 8". The details or specifications of asphalt and/or concrete should be included.
- 3) The subsequent plans should include any utility easements on the property.
- 4) No irrigation system is designed yet.
- 5) The sizes and types of the existing utilities in E. Virginia Ave. and S. Colorado Blvd. should be shown on the plans when appropriate.
- 6) Please note that all work along S. Colorado Blvd. will require an access permit from CDOT and additional coordination with the City of Denver.
- 7) Please include the limits of disturbance on the plans (including drive pan and curb/gutter work on S. Colorado Blvd.).

Specific Sheet review, comments and recommendations.

- 1) Sheet COVER SHEET SDP-1/12
 - a) General Notes corrections:
 - i) Please replace the Fire Department Contact with Mr. Gene Hazlett and correct phone #303-639-4502.
 - ii) Please update the editions of the Glendale Building Code as we are no longer using 1997 & 1999 editions.
- 2) Sheet LAND PLAT SURVERY SDP-2/12
 - a) No comment.
- 3) Sheet EXISTING CONDITIONS SDP-3/12
 - a) The E. Virginia Ave. (in-ground) lift stations controls should be shown and identified.
- 4) Sheet SITE PLAN SDP-4/12
 - a) The striping in the S. Colorado Blvd. access drive should reflect a Right Turn Only movement onto Northbound S. Colorado Blvd.
 - b) Please add a Stop Sign (R1-1) and Right Turn Only (R3-5R) to the access onto S. Colorado Blvd.
 - c) Please consider installing a CDOT Type II or Type III concrete drive pan to the access onto S. Colorado Blvd. CDOT may require a concrete drive pan for access onto S. Colorado Blvd.
 - d) The access onto S. Colorado Blvd. will require a CDOT access permit.
 - i) Glendale Public Works recommends showing the existing drive pan to be demolished and relocated to the north.
 - e) The proposed sidewalk chase should be shown on S. Colorado Blvd. and detail provided.
 - f) A hard surface (ADA compliant) should be installed to temporarily connect the proposed sidewalk to the existing truncated dome at the corner of S. Colorado Blvd. and E. Virginia Ave.
 - g) The area marked as "Trash Enclosure" is shown as "Transformer Location" on sheet 5. Please make sure there is adequate space for both facilities.
- 5) Sheet UTILITY PLAN SDP-5/14
 - a) The responsible party for removing the overhead utility lines should be identified and shown in the plan set.
 - b) Please consider installing a CDOT Type II or Type III concrete drive pan to the access onto S. Colorado Blvd. CDOT may require a concrete drive pan for access onto S. Colorado Blvd.
 - c) The proposed sidewalk chase should be shown on S. Colorado Blvd. and detail provided.
 - d) Please consider installing a new 4" isolation valve at the connection to the existing fire main, or relocating the existing valve on the property within 5' of the Right of Way.

- e) The gravity flow line arrows for the sanitary system are incorrect. All flows on S. Colorado Blvd. converge at E. Virginia Ave., to the lift station, force main and then gravity flows to the East.
 - f) The existing lift station controls should be shown and relocated on the property north of the proposed side walk.
 - i) Electrical power for the lift station controls does not need to be relocated.
 - g) The Glendale Public Works recommends connecting the sanitary service to the existing stub on the Southeast corner of the property.
 - h) The sizes and types of the 4" and 6" water mains on E. Virginia Ave. and S. Colorado Blvd. should be shown on the plans where appropriate.
 - i) The size and type of the 8" sanitary main on E. Virginia Ave. should be shown on the plans where appropriate.
 - j) The location of the water meter pit should be shown.
 - k) The area marked as "Transformer Location" is shown as "Trash Enclosure" on sheet 4. Please make sure there is adequate space for both facilities.
- 6) Sheet GRADING PLAN SDP-6/13
- a) Please consider installing a CDOT Type II or Type III concrete drive pan to the access onto S. Colorado Blvd. CDOT may require a concrete drive pan for access onto S. Colorado Blvd.
 - b) The proposed sidewalk chase detail should be provided. Please ensure CDOT finds a chase drain to discharge stormwater to Colorado Blvd an acceptable practice.
 - c) Please provide a detail for the Water Quality Swale, and each of the curb cuts leading to the WQ swale.
 - d) Please do not have the stormwater from the site discharge across the sidewalk on E. Virginia Ave. Please consider adding a swale instead of a hill and connecting it to the WQ swale.
 - e) Care should be taken not to discharge stormwater on north side of the site onto the adjacent property.
 - i) A 3 foot concrete pan along the North property line may be required to convey the drainage to the West and South towards S. Colorado Blvd.
 - f) Please show where roof drains discharge.
 - g) Please add limits of construction and necessary BMPs to control pollutants to the grading plan, or add an erosion control plan.
- 7) Sheet BASEMENT FLOOR PLAN SDP-7/13
- a) No comment.
- 8) Sheet FIRST FLOOR PLAN SDP-8/13
- a) Please confirm that there is adequate space in the proposed trash enclosure for a trash service and electrical transformer access.
 - b) The enclosure should be covered and sloped so stormwater does not enter the enclosure.
 - c) The enclosure should drain to the sanitary service.

9) Sheet ELEVATIONS SDP-9/13

- a) No comment.

10) Sheet LANDSCAPE PLAN SDP-11/13

- a) Please provide a detail for the sidewalk chase.
- b) The water quality swale should be shown and defined.
 - i) Additionally, please include a profile/cross section of the water quality swale.
- c) The existing in-ground lift station controls should be relocated on the property north of the proposed sidewalk into the landscaped area.
 - i) Electrical power to the lift station controls does not need to be relocated.
- d) Please show the water meter pit on the drawing.

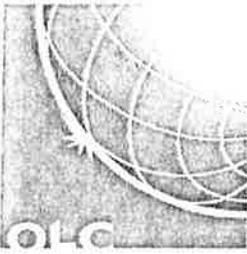
11) Sheet ELECTRICAL SITE PLAN E0.01

- a) Please consider adding more illumination to the north side of the site.

12) Sheet LIGHTING CUTSHEETS E0.02

- a) No comment.

Dec 24, 2014



Chuck Line
Zoning Administrator
City of Glendale
950 South Birch Street
Glendale, CO 80246
T: (303) 639-4601
cline@glendale.co.us

OHLSON LAVOIE
COLLABORATIVE

616 E SPEER BLVD
DENVER, COLORADO
80203-4213

T: 303.294.9244
F: 303.294.9440

www.olcdesigns.com

Re: Preliminary and Final Site Development Plan Application
For: For The Smoking Gun
492 S Colorado Blvd
Glendale, Colorado 80246

Dear Chuck,

I am submitting this application on behalf of the applicant, The Smoking Gun Land Company LLC, for the development of a new structure on 492 South Colorado Boulevard in Glendale, Colorado. We are seeking concurrent review pursuant to Article 17.32.030, Preliminary Site Plan Development and 17.32.050, Final Dimensioned Site Development Plan (PFDSP), of the City of Glendale Zoning Code, please find the following required documentation:

1. One 24 x 36 set of the PFDSP plans
2. One 11x17 set of the same (a PDF of these will be sent via email, separately)
3. Check in the amount of \$2,500 for Planning Review Fees
4. Application Information (below)

We are respectfully submitting these documents for inclusion in the next Planning Commission's agenda.

Please contact me at 303.887.0152 or via email (dvisani@olcdesigns.com) if you have any questions.

Sincerely,
OHLSON LAVOIE COLLABORATIVE
Architecture | Aquatics | Interiors | Technology

Donaldo H. Visani, AIA
Senior Principal

Attachments

ARCHITECTURE
AQUATICS
INTERIORS
TECHNOLOGY

Application Information:

Project Basics:

The project consists of a new structure to replace the existing building on 492 S Colorado Boulevard, which has been recently demolished due to the improvements on to the intersection at Virginia Avenue and Colorado Boulevard. The proposed structure and associated site improvements is proposed to be built on 492 S Colorado Boulevard

The property is currently zoned "Regional Retail and Commercial PUD" and is within the "Eating and Entertainment Overlay" as detailed in the City of Glendale Zoning Code. For further project information, please see the attached drawings, specific point-by-point response to zoning code article requirements and our responses to written staff comments.

Attached Drawings:

Sheet Number	Sheet Name	Comments
SDP - 1/12	COVER SHEET	Cover
SDP - 2/12	LAND PLAT SURVEY	Updated Survey
SDP - 3/12	EXISTING CONDITIONS	Existing Survey
SDP - 4/12	CIVIL SITE PLAN	Civil
SDP - 5/12	UTILITY PLAN	Civil
SDP - 6/12	GRADING PLAN	Civil
SDP - 7/12	BASEMENT PLAN	Architectural (Reference)
SDP - 8/12	FIRST FLOOR PLAN	Architectural (Reference)
SDP - 9/12	ELEVATIONS	Architectural (Reference)
SDP - 10/12	ELEVATIONS	Architectural (Reference)
SDP - 11/12	LANDSCAPE PLAN	Landscape
SDP - 12/13	PHOTOMETRIC PLAN	Electrical

Specific Responses to Article 17.32.030 (Preliminary Site Plan Development):

- A. The location and name of the proposed development;
Location: 492 S Colorado Blvd, Glendale, CO
Name: The Smoking Gun
- B. The names, addresses and phone numbers of the landowners, developers and designers of the development;

Landowner: Anthony Marino Family Trust
Contact: Robert J. Bruce, Esq.
Lawlis & Bruce, LLC
1875 Lawrence Street, Suite 750
Denver, Colorado 80202
(303) 573-5498 phone
(303) 573-5537 fax
robertbruce@lawlisbruce.com

Developer: The Smoking Gun Land Company LLC (and Leasor)
Contact: Deborah A. Matthews, Manager
490 South Colorado Boulevard

Glendale, CO 80246
(303) 916-6707
debbie@westernwines.net

Designers: Ohlson Lavoie Collaborative
Contact: Donaldo H. Visani, AIA, Architect
616 E Speer Blvd
Denver, CO 80203
(303) 294-9244
dvisani@olcdesigns.com

- C. Information regarding the physical characteristics of the surrounding area and the developments within three hundred (300) feet of all property boundary lines;
See submitted drawings
- D. The size of the proposed development site and the character, and approximate location and density of all residential and nonresidential structures including the actual shape, proportion and dimensions of the site to be built upon, the size, shape, height and location of all buildings or other structures to be erected, altered or moved and of any building or other structure on the property;
See submitted drawings.
- E. Existing land uses, pedestrian amenities, ingress and egress points, and landscaping within at least three hundred (300) feet of all property boundary lines;
See submitted drawings.
- F. Adjacent streets and proposed points of access;
See submitted drawings.
- G. The existing topographic character of the land and existing natural features;
See submitted drawings.
- H. The property lines and names of adjoining properties;
See submitted drawings.
- I. Location and descriptions of any existing utilities, easements, leases, common ownership or other encumbrances on the property;
See submitted drawings.
- J. Existing and proposed land use and the approximate location, height, massing and scale of proposed buildings and structures in relationship to the structures on abutting lots;
See submitted drawings.
The property is within the Regional Retail and Commercial PUD (Eating and Entertainment Overlay). The existing and proposed land use is the same: Dining and Drinking Establishment (w/ dancing and entertainment).
Maximum height will be at or under 45' for walls or structures and 55' to ridgelines.
- K. The approximate location, number of spaces, and internal circulation of parking areas or structures and indication as to whether the applicant is interested in reducing the minimum parking requirements through the use of transportation demand management techniques;
See submitted drawings
- L. Signed agreement to pay all development review costs;
To be provided by Developer.
- M. North arrow and graphic scale;
See submitted drawings.
- N. A general indication of the expected schedule of development indicating:
 - 1. The approximate date when construction of the project can be expected to begin,
April 15, 2015

2. The stages in which the project will be built;
- | | |
|-----------------------|---------------------|
| Construction | 04/15/15 - 11/15/15 |
| Virginia Improvements | TBD |
- O. Documentation showing how all general design and development standards will be met, including street edge treatment, pedestrian amenities, compatibility in site design with abutting uses, open space, usable open space, and parking;
See submitted drawings
- P. Documentation confirming that the applicant has legally sufficient interest in the property proposed for development, or is the duly appointed agent of such a person;
NA or previously submitted
- Q. Minutes and description of notice for the neighborhood meeting or a written waiver by the Zoning Administrator.
By others

Specific Responses to Article 17.32.050 (Final Dimensioned Site Plan):

- A. The final anticipated topography of the area involved;
See submitted drawings.
- B. The existing and intended uses of all buildings and structures;
See submitted drawings.
The property is within the Regional Retail and Commercial PUD (Eating and Entertainment Overlay). The existing and proposed land use is the same: Dining and Drinking Establishment (w/ dancing and entertainment).
Maximum height will be at or under 45' for walls or structures and 55' to ridgelines.
- C. The dimensions of all improvements including but not limited to: structures, yards, open spaces, pedestrian amenities, circulation patterns both vehicular and non-vehicular;
See submitted drawings.
- D. Final building elevations and their relationship to abutting properties;
See submitted drawings.
- E. A traffic plan and study showing the
1. location of all parking and loading areas or structures,
See submitted drawings.
 2. along with the number of spaces,
See submitted drawings.
 3. circulation patterns both vehicular and non vehicular,
See submitted drawings.
Development standards include: AASHTO Green Book - A Policy on Geometric Design of Highways and Streets, 6th Edition, 2011 and the City of Glendale Zoning Code.
 4. traffic impact report,
Traffic patterns are expected to remain unchanged. One curb cut on Colorado Blvd to remain. The Developer/Leasor will be granted conditional vehicle access to the abutting property (490 S Colorado Blvd) by its property Owner. The Applicant will coordinate with the City of Glendale and others, as needed, to finalize the design of any off-site improvements on City property.
 5. the location and extent of any land or right-of-way to be dedicated to the city,
See submitted drawings.
 6. along with a CDOT access permit if required;

CDOT Access Permit Application will be submitted based on change of use to retail.

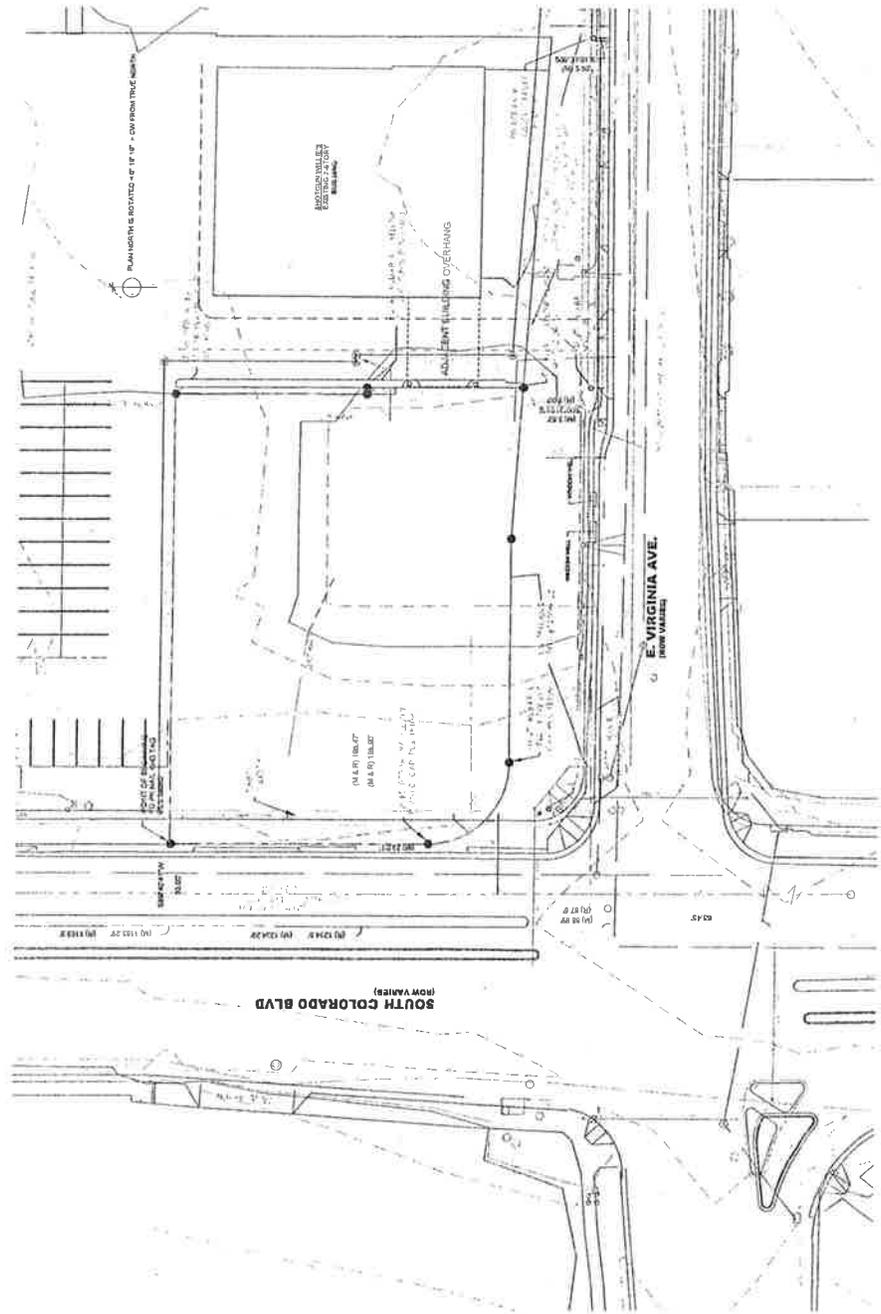
- F. A detailed landscape plan showing dimensioned sidewalks, street edge treatment, landscaping (all plans shall depict material sizes no larger than installation size plus one (1) year of growth), pedestrian amenities, location and pattern of exterior lighting, the location of fire hydrants, location of trash receptacles, outdoor storage, utilities and screening materials to be used as well as the design of and intended use of all open space;
See submitted drawings.
- G. Utility study and plan showing the proposed utilities including sewers, both sanitary and storm, gas lines, waterlines, and electrical lines showing proposed connections to existing utility systems;
See submitted drawings.
- H. Certified survey of the property sealed by a registered land surveyor;
A Land Survey Plat (LSP) as defined by Colorado Revised Statutes (38-51-102) will be prepared. The survey will be in conformance with minimum standards as defined by CRS-38-51-106.
- I. North arrow and graphic scale;
See submitted drawings.
- J. Other documents or materials required as part of the preliminary site development plan approval;
Not applicable.
- K. If the final site development plan's location is within the Glendale urban renewal plan area, the application shall include the Glendale Economic Redevelopment Authority's comment; and recommendations. (Ord.2007-14§1 (part); Ord.2005-7§1 (part); Ord.1997-13§1(part))
Not applicable.

Compliance with Zoning Code

- A. The following table is summary of the attributes for the site plan regarding the dimensional and quantitative performance standards required in the code.

Attribute	Code Sec	Requirement	Submittal	Complies?
Parking Spaces	17.40.040	1 per 250 sq/feet	29 spaces	Complies
Parking Stall Size	17.20.070	8.5 X18, Min	8.5 X18	Complies
Aisle	17.20.10	22.5', Min	22.5'	Complies
	17.20.10	2% of parking spaces	1 Van	Complies
Off-Street Loading	17.24.02	10X45, if routine deliveries	See plans	Complies
Non-Residential Setbacks	17.16.040B	Maximum 20ft from ROW	Colorado >75' Virginia > 72'	Variance requested
Open Space	17.16.070B	25% minimum. 20% if exceeds density of materials	Approx 23.0%	Variance requested
Building Height	17.16.060	45 ft wall, 55 ft ridgeline	35' to parapet	Complies

- B. The applicant will provide detailed information about the sidewalk connection on the ingress/egress area on Colorado Blvd. Provided concept on Site Plan, will update details pending CDOT comments.
- C. The applicant consents to tie Virginia Avenue City owned landscaping into their irrigation system with an agreement for the City to reimburse reasonable water costs annually.
- D. The applicant consents to dedicate the sidewalk on the Colorado Boulevard side to the City.



EXISTING CONDITIONS
THE SMOKING GUN

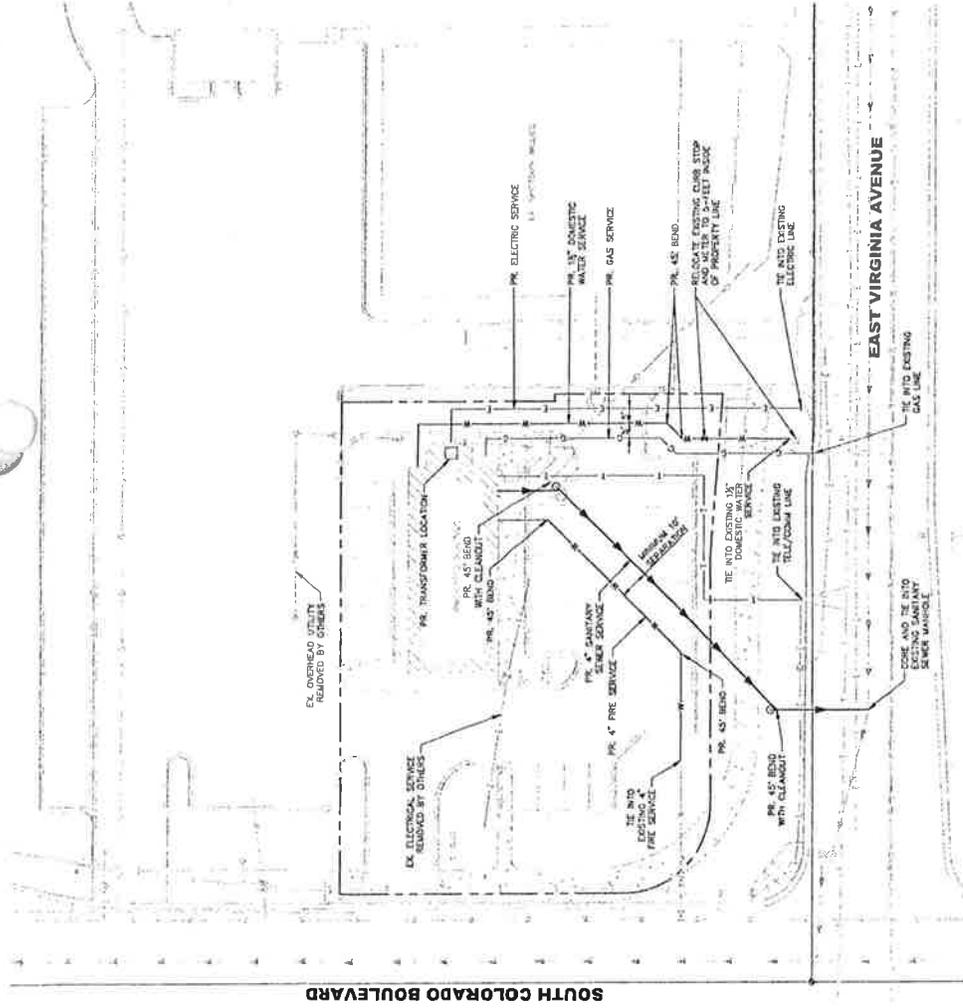


 PROJECT NO. 15-000000-0000

 SHEET NO. 501-373

LEGEND

- ROW/PROPERTY LINE
- CENTERLINE
- PROPERTY BOUNDARY
- EASEMENT
- PR. WATER MAIN
- PR. WATER VALVE
- PR. FIRE HYDRANT
- PR. SANITARY SEWER MAIN
- PR. STORM DRAIN
- PR. STORM DRAIN INLET
- EX. GAS MAIN
- EX. WATER MAIN
- EX. WATER VALVE
- EX. FIRE HYDRANT
- EX. SANITARY SEWERS
- EX. STORM DRAIN
- EX. STORM DRAIN INLET
- EX. LIGHT/POWER POLE
- EX. UNDERGROUND ELECTRIC
- EX. OVERHEAD ELECTRIC
- EX. UNDERGROUND TELEPHONE



UNCC
CALL BEFORE
YOU DIG
811
OR
1-800-922-1987
Utility Notification
Center of Colorado

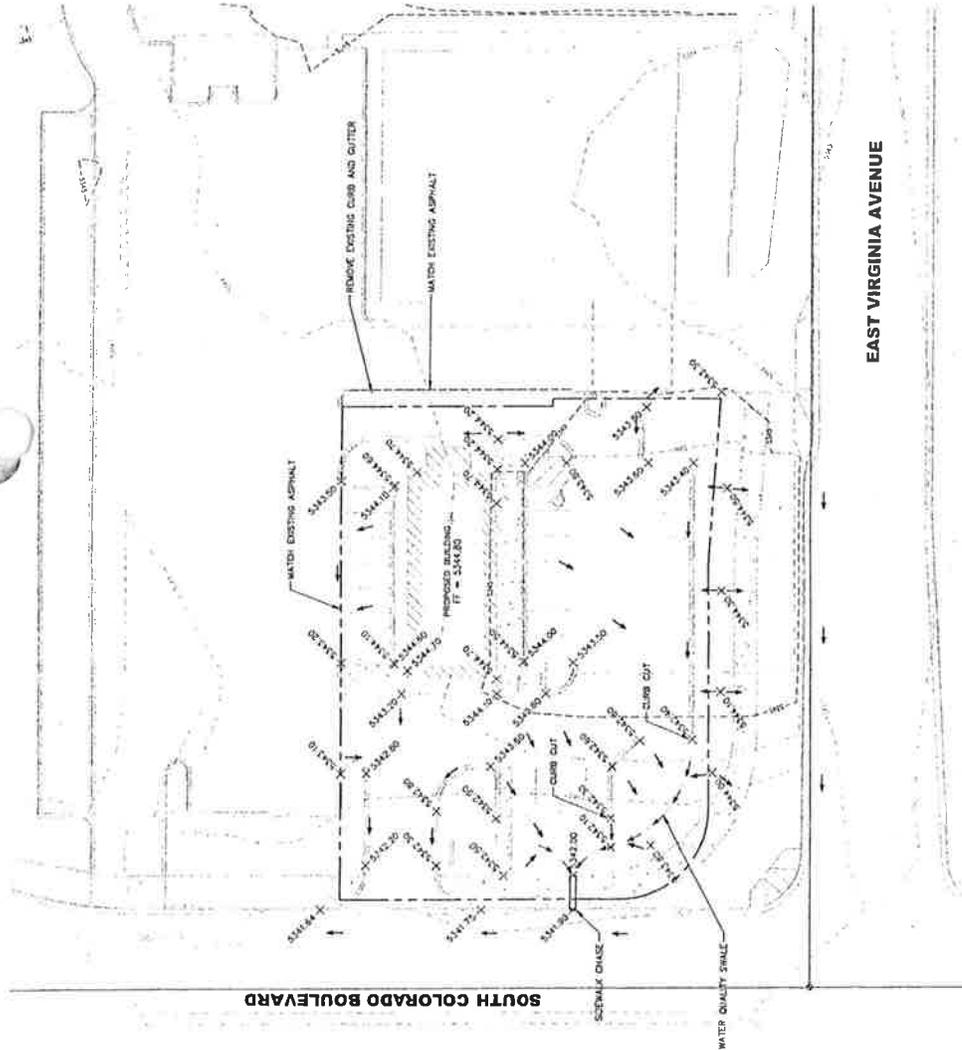
Preliminary & Final Site Development Plan

PROJECT NO.	SDP-513
DATE	
SCALE	
DRAWN BY	
CHECKED BY	
APPROVED BY	



UTILITY PLAN
THE SMOKING GUN





LEGEND

- ROW/PROPERTY LINE
- CENTERLINE
- PROPERTY BOUNDARY
- EASEMENT
- PR WATER MAIN
- PR WATER VALVE
- PR FIRE HYDRANT
- PR SANITARY SEWER MAIN
- PR STORM DRAIN
- PR STORM DRAIN INLET
- EX GAS MAIN
- EX WATER MAIN
- EX WATER VALVE
- EX FIRE HYDRANT
- EX SANITARY SEWERS
- EX STORM DRAIN
- EX STORM DRAIN INLET
- EX LIGHT/POWER POLE
- EX UNDERGROUND ELECTRIC
- EX OVERHEAD ELECTRIC
- EX UNDERGROUND TELEPHONE
- FLOW ARROW
- PR SWALE
- SPOT ELEVATION
- EX MAJOR CONTOUR
- EX MINOR CONTOUR



UNICORE
CALL OR
YOU DIG
811
OR
1-800-922-1987
Utility Notification
Center of Colorado

Calibre
Construction • Engineering • Survey

PROJECT NO.	SDP-613
DATE	
SCALE	
DRAWN BY	
CHECKED BY	
APPROVED BY	

EAST VIRGINIA AVENUE

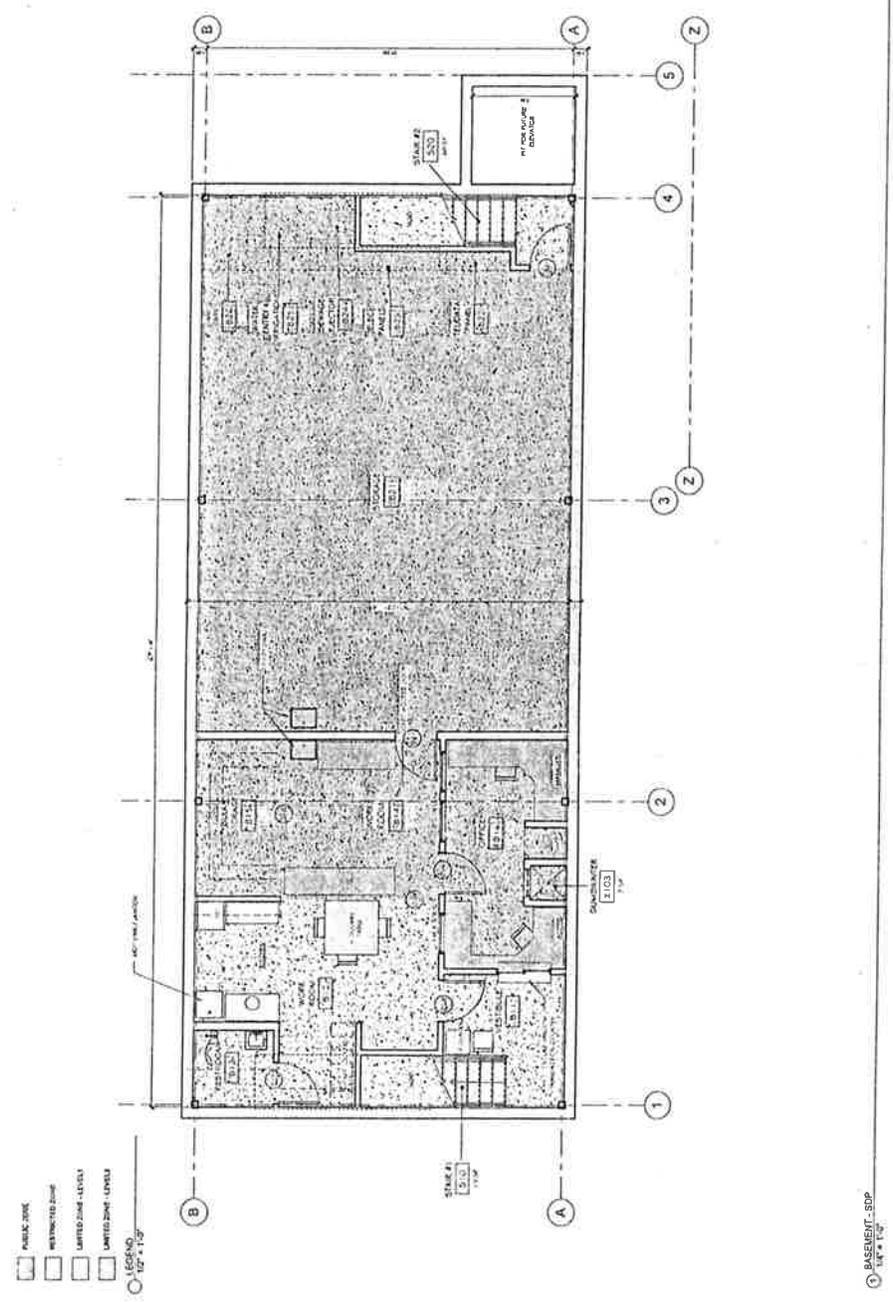
SOUTH COLORADO BOULEVARD



GRADING PLAN
THE SMOKING GUN

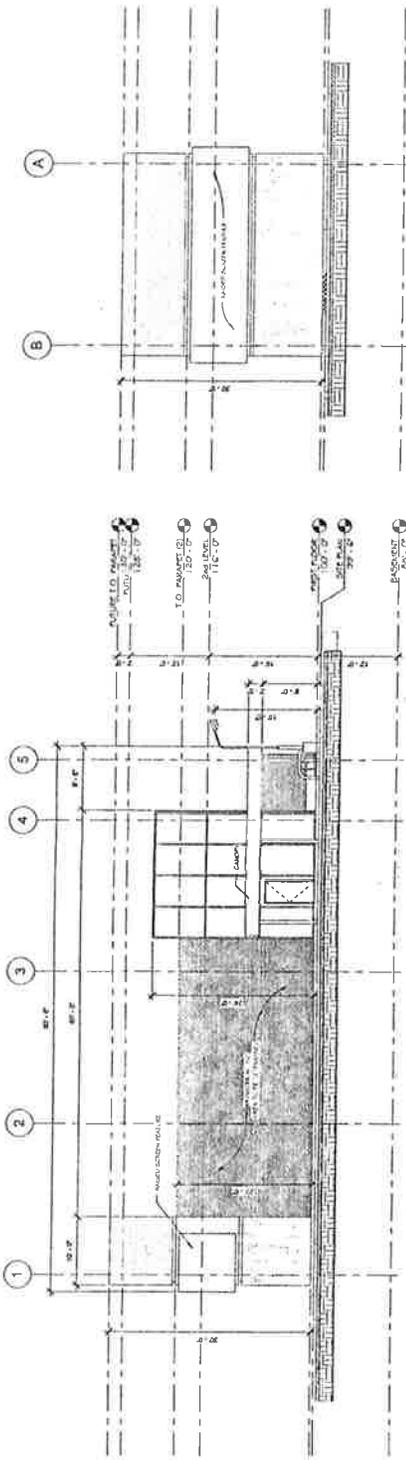
Preliminary & Final Site Development Plan

PROJECT NO.	2012-001
DATE	11/15/12
SCALE	1/8" = 1'-0"
PROJECT NAME	BASEMENT - 2012



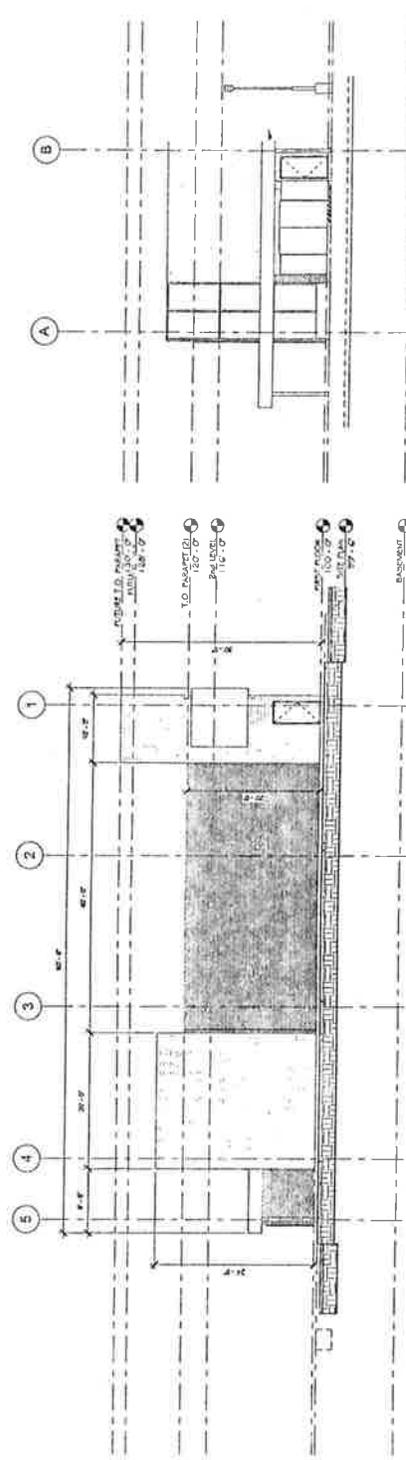
- LEGEND
- PUBLIC ZONE
 - RESTRICTED ZONE
 - LIMITED ZONE - LEVELS
 - LIMITED ZONE - LEVELS

BASEMENT FLOOR PLAN
THE SMOKING GUN



1 SOUTH
1/8" = 1'-0"

2 WEST
1/8" = 1'-0"



3 NORTH
1/8" = 1'-0"

4 EAST
1/8" = 1'-0"

ELEVATIONS
THE SMOKING GUN

DATE	SDP - 9/13
DESIGNER	
CHECKER	
PROJECT	
LOCATION	
SCALE	

EXHIBIT 4

RECORD OF PROCEEDINGS

MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL OF GLENDALE, COLORADO

February 3, 2015

Mayor Mike Dunafon led the Pledge of Allegiance.

1. Call to Order and Roll Call. Mayor Mike Dunafon called the regular meeting of the City Council to order. Sherry Frame, City Clerk, called the roll. The following Council Members were present: Mayor Mike Dunafon, Mayor Pro Tem Paula Bovo, Council Members Jeff Allen, Scott Franssen, Joe Giglio, Dario Katardzic, and Doris Rigoni. City Manager Jerry Peters, City Attorney Matt Giacomini, other members of the City staff, and members of the public also attended the meeting.

2. Approval of Agenda. Council Member Dario Katardzic moved to approve the agenda. This particular motion requires no second. The motion passed unanimously.

3. Public Comments. There was none.

4. Consent Items

- a. Minutes of the January 6, 2015 Regular Meeting
- b. Minutes of January 20, 2015, Regular Meeting
- c. Renewal of Hotel and Restaurant Liquor License for Applebee's Neighborhood Grill and Bar, 410 South Colorado Blvd.
- d. Renewal of Retail Liquor License for YKim Corporation, d/b/a Cherri Plaza Liquors, 4611 & 4605 East Mississippi Avenue
- e. Renewal of Tavern Liquor License for JP Colorado, LLC d/b/a World of Beer, 660 South Colorado Blvd.
- f. Renewal of Optional Premises License for Scrum Enterprises, Inc. d/b/a Scrum Enterprises, 4599 East Tennessee Avenue
- g. Renewal of Hotel and Restaurant Liquor License for Zhuo & Chen Corp. d/b/a Ming's Dynasty Chinese Restaurant at 4251 East Mississippi Avenue

Mayor Pro Tem Bovo moved to approve the consent items. Council Member Rigoni seconded the motion. The motion then passed unanimously.

5. New Manager's Registration, Neill Boyd, JP Colorado LLC d/b/a World of Beer, 660 South Colorado Blvd. Mayor Dunafon read the matter into the record by title only, all Council Members having received copies of the same.

Chief William Haskins said the Police Department ran a criminal check, which showed no criminal activity by Neill Boyd. The State of Colorado Liquor Enforcement Section shows no

RECORD OF PROCEEDINGS

February 3, 2015 Minutes

Page 2 of 4

record of complaints against Mr. Boyd or World of Beer. Based on the investigation and with the consent of the Mayor and City Council, Chief Haskins recommended approval of the application for change of manager for World of Beer.

Neill Boyd, General Manager of World of Beer, appeared before Council for any questions.

Mayor Pro Tem Bovo moved to approve the New Manager's Registration, Neill Boyd, JP Colorado LLC d/b/a World of Beer, 660 South Colorado Blvd. Council Member Katardzic seconded the motion. The motion then passed unanimously.

6. Public Hearing for Concurrent and Final Site Development Plan and Special Use Permit, Smoking Gun, 492 South Colorado Blvd. Mayor Dunafon read the matter into the record by title only, all Council Members having received copies of the same. Mayor Dunafon recused himself from the dais and turned the gavel over to Mayor Pro Tem Bovo, who opened the public hearing.

Chuck Line presented information on the site plan; the building would sit on the old Shotgun Willie's location. Council Member Franssen asked about the planned use of the building, and Mr. Line said the intended use is for the sale of recreational marijuana. Mr. Line said that the Planning Commission and Staff recommend approval of this site plan and issuance of the special use permit.

Council Member Giglio asked about the previous application for a drive-through Starbucks site. Mr. Line said that Starbucks never followed through on obtaining a cross access agreement with the adjacent property owner, which access was a major component of the site plan. Council Member Giglio also asked about the ownership of the site and the leaseholders. Mr. Line said the landowner, the Marino Family, were present at the Planning Commission meeting in January 2015.

Doni Visani of Ohlson Lavoie appeared before Council and gave a description of the project. Council Member Franssen asked whether the building could be used for another purpose if marijuana laws in Colorado changed. Mr. Visani said that the building is constructed simply of steel frames; more windows and doors can easily be added by a future retailer. Council Member Rigoni asked whether a portion of the space is being designed as a grow facility. Mr. Visani said there is an area in the basement that could be used for a future grow, but nothing is being planned at present.

Debbie Matthews appeared before Council for questions. Council Member Giglio asked about her ownership interest in the site. She said that she is 60% owner of Coal Creek and 73% owner of Smoking Gun.

RECORD OF PROCEEDINGS

February 3, 2015 Minutes

Page 3 of 4

Mayor Pro Tem Bovo closed the public hearing. Council Member Franssen moved to approve the Concurrent Preliminary and Final Site Development Plan and Special Use Permit with conditions for Smoking Gun, 492 South Colorado Blvd. Council Member Allen seconded the motion. Council voted, and Council Member Katardzic voted nay. Mayor Pro Tem Bovo asked for individual votes on the motion. Council Member Giglio voted nay. Council Member Rigoni voted nay. Mr. Line said that, as the City Attorney can attest, when there was a tie vote, under Colorado statute, a party who has recused himself or herself because of a potential conflict of interest, may return to vote to break the tie, with disclosure of the conflict. Mayor Dunafon took his place back on the dais. The Mayor noted the reasons for his recusal. He voted yes, which broke the tie. The motion passed 4-3.

7. On-Going Updates:

Infinity Park. Linda Cassaday, Deputy City Manager and Finance Director, said the first home game of the rugby season is February 28. The lead-in for the game will be a match between East High School and Regis High School. A new ticket booth will be erected in the stadium gateway. On May 30, the Event Center will host the Denver Post Travel Expo, which will rent out the full facility.

8. Department Reports. Nicole Limoges, Executive Director of the Glendale Sports Center, said that 115 new members joined in January – the most new members since the month the Center first opened. Josh Bertrand, Public Works Director, said the Rite Aid project is underway, with widening of Cherry Street and Leetsdale Drive. Chuck Line said Natural Grocers is making headway on their fiber lines issue. What was thought to be a phone line running through their proposed relocation property turned out to be one of the largest fiber lines in the metro area. Chief Haskins said Marshal Baker, the first marshal in the City of Glendale and the only member of Glendale law enforcement who was ever killed in the line of duty, will be memorialized on the Colorado Law Enforcement memorial on May 1, 2015. Linda Cassaday said the software giving customers the ability to pay utility payments online has been installed, and the process will be available in the near future. Jerry Peters thanked the Public Works Department and the Police Department for their response to the recent snowstorm and their cleanup of a homeless camp on the Creek.

9. Public Comments. There was none.

10. Council Reports. Council Member Allen thanked everyone who attended the Chamber of Commerce's Member Appreciation luncheon. Mayor Dunafon congratulated Josh Bertrand, who saved a man's life in the City after attending the Police Department's Run, Hide, Fight, Treat training.

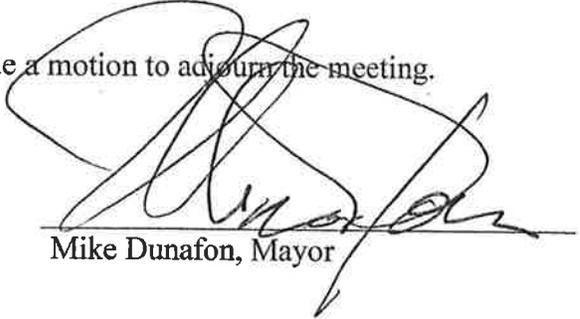
11. Other Business. There was no other business.

RECORD OF PROCEEDINGS

February 3, 2015 Minutes
Page 4 of 4

12. Adjournment. Council Member Allen made a motion to adjourn the meeting.

Dated: April 7, 2015


Mike Dunafon, Mayor

ATTEST:

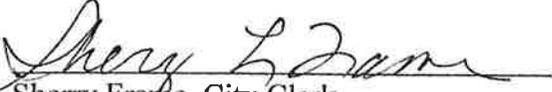

Sherry Frame, City Clerk

EXHIBIT 5

Agenda
Glendale City Council
Regular Meeting
March 17, 2015

PLEASE TURN OFF ALL CELLULAR TELEPHONES AND/OR AUDIBLE PAGERS

4/6/2016 4:35 PM

7:00 p.m. Regular Meeting

Pledge of Allegiance

1. Call to Order and Roll Call
2. Approval of Agenda
3. Public Comments (three-minute-per-person time limit)
4. Consider eliminating any ambiguity on a vote taken at the February 3, 2015 City Council meeting to approve the Concurrent and Final Site Development Plan and Special Use Permit, with staff conditions, for Smoking Gun, 492 South Colorado Blvd.
5. Re-vote on the Motion to Approve Concurrent and Final Site Development Plan and Special Use Permit, with staff conditions, for Smoking Gun, 492 South Colorado Blvd., made by Council Member Scott Franssen and seconded by Council Member Jeff Allen
6. Public Comments (three minute per person time limit)
7. Other Business
8. Items for Press Release
9. Adjournment

EXHIBIT 6

6

RECORD OF PROCEEDINGS

MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL OF GLENDALE, COLORADO

March 17, 2015

Mayor Mike Dunafon led the Pledge of Allegiance.

1. Call to Order and Roll Call. Mayor Mike Dunafon called the regular meeting of the City Council to order. Sherry Frame, City Clerk, called the roll. The following Council Members were present: Mayor Mike Dunafon, Mayor Pro Tem Paula Bovo, and Council Members Jeff Allen, Scott Franssen, Joe Giglio, and Doris Rigoni. Council Member Dario Katardzic was absent. City Manager Jerry Peters, City Attorneys Jeff Springer and Matt Giacomini, and other members of the City staff also attended the meeting.

2. Approval of Agenda. Council Member Jeff Allen moved to approve the agenda. This particular motion requires no second. The motion passed unanimously.

3. Public Comments. There was none.

Mayor Dunafon recused himself and handed the gavel to Mayor Pro Tem Bovo.

4. Consider Eliminating Any Ambiguity on a Vote Taken at the February 3, 2015 City Council Meeting to Approve the Concurrent and Final Site Development Plan and Special Use Permit, With Staff Conditions, for Smoking Gun, 492 South Colorado Blvd. Mayor Pro Tem Bovo read the matter into the record by title only, all Council Members having received copies of the same.

City Attorney Springer said he listened to the recording of the February 3, 2015 Council meeting and said the recording is not as clear as he would like it to be. Mr. Springer said that in his opinion the recording creates a potential ambiguity. Even though everyone at the meeting proceeded on the assumption there was a 3-3 vote and the Mayor, appropriately under Colorado state law, broke the tie, the recording does not make that clear. Mr. Springer suggested the public hearing not be reopened, as Council has already heard applicant's presentation, but instead Council should revoke.

Mr. Springer noted Council Member Katardzic was not present and is out of the country. Mr. Springer said he previously suggested City staff reach out to Mr. Katardzic to register a vote. Mr. Springer asked Ms. Frame to give the details of her attempts to reach Mr. Katardzic.

Ms. Frame said that she first attempted to reach Mr. Katardzic on Monday, March 16, 2015, at the request of Chuck Line, by email to his personal email account, by text to his cell phone, and by sending a Facebook friend request. She did hear back from him in the afternoon via text, saying he would not be able to call into the Council meeting because he would be flying from Mexico to Denver at that time. Later Monday afternoon, she sent two more text messages asking Mr. Katardzic if he could call her at his convenience to record his vote so it could be read to the Council at the upcoming meeting. She did

RECORD OF PROCEEDINGS

March 17, 2015 Minutes

Page 2 of 3

not receive a reply from him on Monday so sent him a Facebook Instant Message and a phone text on Tuesday morning, asking again for his participation in the recording, but she did not hear back from him.

Mr. Springer said on February 3 there was an aye/nay vote originally, then the Mayor Pro Tem concluded the need of an individual vote, but the Mayor Pro Tem's vote is not heard on the recording. Mr. Springer said his opinion was that Council Member Katardzic's vote should be registered as a "no," as Katardzic voted "no" previously and there is no evidence to conclude he has changed his mind.

Council Member Franssen moved to Consider Eliminating Any Ambiguity on a Vote Taken at the February 3, 2015 City Council Meeting to Approve the Concurrent and Final Site Development Plan and Special Use Permit, With Staff Conditions, for Smoking Gun, 492 South Colorado Blvd. Council Member Allen seconded the motion. The motion then passed unanimously.

5. Re-vote on the Motion to Approve Concurrent and Final Site Development Plan and Special Use Permit, With Staff Conditions, for Smoking Gun, 492 South Colorado Blvd., Made by Council Member Scott Franssen and Seconded by Council Member Jeff Allen. Mayor Pro Tem Bovo read the matter into the record by title only, all Council Members having received copies of the same.

Council voted on the Motion to Approve Concurrent and Final Site Development Plan and Special Use Permit, With Staff Conditions, for Smoking Gun, 492 South Colorado Blvd., Made by Council Member Scott Franssen and Seconded by Council Member Jeff Allen, and the motion passed 5-1.

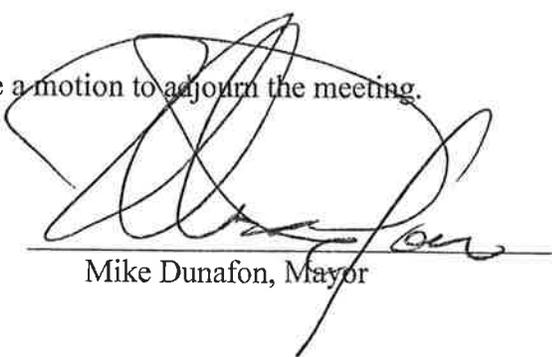
Mayor Dunafon returned to the dais.

6. Other Business. There was no other business.

7. Items for Press Release. There was none.

8. Adjournment. Council Member Allen made a motion to adjourn the meeting.

Dated: April 7, 2015


Mike Dunafon, Mayor

ATTEST:


Sherry Frame, City Clerk

EXHIBIT 7

7



January 29, 2016

Mayor Pro Tem Paula Bovo
City of Glendale
Glendale, CO 80246

RE: Ethics Complaint Against Mayor Mike Dunafon

Dear Mayor Pro Tem Bovo,

Pursuant to Chapter 2.14 of the Glendale Municipal Code, Ethics Watch hereby files this ethics complaint against Glendale Mayor Mike Dunafon.

1. Smoking Gun vote

The minutes of the meeting of the Glendale City Council on February 3, 2015, a copy of which is attached as Exhibit 1, reflect that Mayor Dunafon initially recused from a vote on a Concurrent and Final Site Development Plan and Special Use Permit for the Smoking Gun at 492 S. Colorado Boulevard (the "Plan"). We understand that Mayor Dunafon's initial recusal was due to his wife's ownership interest in the Smoking Gun.

Approval of the Plan was initially defeated on a tie vote, 3-3. Mayor Dunafon then rescinded his recusal and proceeded to vote on a matter in which he had a financial interest. By breaking the tie, Mayor Dunafon ensured passage of the Plan, that would directly benefit his financial interest.

Chair Mr Section 4.27 of the Glendale Municipal Code provides:

No member of the Council shall vote on any question in which he has a financial interest, other than the common public interest, or on any question concerning his own conduct.

The same prohibition is found in the City's Ethics Code, Glendale Municipal Code Section 2.14.040(B):

No elected official, officer, board member, employee, or independent contractor shall perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative or agent.

An advocate for the Plan erroneously stated during the meeting that Colorado law allows a councilmember who is recused due to a conflict of interest to cast the deciding vote to benefit his personal financial interests in order to break a tie. To the contrary,

Colorado state law – assuming it could displace the specific, blanket prohibition on conflicted votes contained in Section 4.27 of the Municipal Code – allows local government officials to act under a conflict of interest only if the official files in writing a conflict of interest disclosure with the Colorado Secretary of State. C.R.S. § 24-18-110. It appears that Mayor Dunafon did not file such a disclosure.

2. Bavarian Inn Restaurant vote

The minutes of the Glendale City Council meeting of April 7, 2015, a copy of which is attached as Exhibit 2, reflect that an item on the consent agenda was approval of the renewal of the liquor license for Bavarian Inn Restaurant, Inc. d/b/a Shotgun Willie's. It has been widely reported that Shotgun Willie's is also owned by the Mayor's wife. Yet Mayor Dunafon voted to approve the consent agenda, including the renewal of the liquor license for his wife's business.

The same prohibitions Mayor Dunafon violated when he cast his conflicted vote on the Smoking Gun vote apply fully to his conflicted vote on the Bavarian Inn Restaurant license renewal.

Requested Action

Pursuant to Glendale Municipal Code § 2.14.040(F), Ethics Watch requests that City Council hold a public hearing on this complaint, render findings, and adopt a resolution censuring Mayor Dunafon for his conflicted votes.

Please feel free to contact me to discuss this matter further.

Very truly yours,



Luis Toro
Director

EXHIBIT 1

RECORD OF PROCEEDINGS

MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL OF GLENDALE, COLORADO

February 3, 2015

Mayor Mike Dunafon led the Pledge of Allegiance.

1. Call to Order and Roll Call. Mayor Mike Dunafon called the regular meeting of the City Council to order. Sherry Frame, City Clerk, called the roll. The following Council Members were present: Mayor Mike Dunafon, Mayor Pro Tem Paula Bovo, Council Members Jeff Allen, Scott Franssen, Joe Giglio, Dario Katardzic, and Doris Rigoni. City Manager Jerry Peters, City Attorney Matt Giacomini, other members of the City staff, and members of the public also attended the meeting.

2. Approval of Agenda. Council Member Dario Katardzic moved to approve the agenda. This particular motion requires no second. The motion passed unanimously.

3. Public Comments. There was none.

4. Consent Items

- a. Minutes of the January 6, 2015 Regular Meeting
- b. Minutes of January 20, 2015, Regular Meeting
- c. Renewal of Hotel and Restaurant Liquor License for Applebee's Neighborhood Grill and Bar, 410 South Colorado Blvd.
- d. Renewal of Retail Liquor License for YKim Corporation, d/b/a Cherri Plaza Liquors, 4611 & 4605 East Mississippi Avenue
- e. Renewal of Tavern Liquor License for JP Colorado, LLC d/b/a World of Beer, 660 South Colorado Blvd.
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- g. Renewal of Hotel and Restaurant Liquor License for Zhuo & Chen Corp. d/b/a Ming's Dynasty Chinese Restaurant at 4251 East Mississippi Avenue

Mayor Pro Tem Bovo moved to approve the consent items. Council Member Rigoni seconded the motion. The motion then passed unanimously.

5. New Manager's Registration, Neill Boyd, JP Colorado LLC d/b/a World of Beer, 660 South Colorado Blvd. Mayor Dunafon read the matter into the record by title only, all Council Members having received copies of the same.

Chief William Haskins said the Police Department ran a criminal check, which showed no criminal activity by Neill Boyd. The State of Colorado Liquor Enforcement Section shows no

RECORD OF PROCEEDINGS

February 3, 2015 Minutes
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record of complaints against Mr. Boyd or World of Beer. Based on the investigation and with the consent of the Mayor and City Council, Chief Haskins recommended approval of the application for change of manager for World of Beer.

Neill Boyd, General Manager of World of Beer, appeared before Council for any questions.

Mayor Pro Tem Bovo moved to approve the New Manager's Registration, Neill Boyd, JP Colorado LLC d/b/a World of Beer, 660 South Colorado Blvd. Council Member Katardzie seconded the motion. The motion then passed unanimously.

6. Public Hearing for Concurrent and Final Site Development Plan and Special Use Permit, Smoking Gun, 492 South Colorado Blvd. Mayor Dunafon read the matter into the record by title only, all Council Members having received copies of the same. Mayor Dunafon recused himself from the dais and turned the gavel over to Mayor Pro Tem Bovo, who opened the public hearing.

Chuck Line presented information on the site plan; the building would sit on the old Shotgun Willie's location. Council Member Franssen asked about the planned use of the building, and Mr. Line said the intended use is for the sale of recreational marijuana. Mr. Line said that the Planning Commission and Staff recommend approval of this site plan and issuance of the special use permit.

Council Member Giglio asked about the previous application for a drive-through Starbucks site. Mr. Line said that Starbucks never followed through on obtaining a cross access agreement with the adjacent property owner, which access was a major component of the site plan. Council Member Giglio also asked about the ownership of the site and the leaseholders. Mr. Line said the landowner, the Marino Family, were present at the Planning Commission meeting in January 2015.

Doni Visani of Ohlson Lavoie appeared before Council and gave a description of the project. Council Member Franssen asked whether the building could be used for another purpose if marijuana laws in Colorado changed. Mr. Visani said that the building is constructed simply of steel frames; more windows and doors can easily be added by a future retailer. Council Member Rigoni asked whether a portion of the space is being designed as a grow facility. Mr. Visani said there is an area in the basement that could be used for a future grow, but nothing is being planned at present.

Debbie Matthews appeared before Council for questions. Council Member Giglio asked about her ownership interest in the site. She said that she is 60% owner of Coal Creek and 73% owner of Smoking Gun.

RECORD OF PROCEEDINGS

February 3, 2015 Minutes
Page 3 of 4

Mayor Pro Tem Bovo closed the public hearing. Council Member Franssen moved to approve the Concurrent Preliminary and Final Site Development Plan and Special Use Permit with conditions for Smoking Gun, 492 South Colorado Blvd. Council Member Allen seconded the motion. Council voted, and Council Member Katardzic voted nay. Mayor Pro Tem Bovo asked for individual votes on the motion. Council Member Giglio voted nay. Council Member Rigoni voted nay. Mr. Line said that, as the City Attorney can attest, when there was a tie vote, under Colorado statute, a party who has recused himself or herself because of a potential conflict of interest, may return to vote to break the tie, with disclosure of the conflict. Mayor Dunafon took his place back on the dais. The Mayor noted the reasons for his recusal. He voted yes, which broke the tie. The motion passed 4-3.

7. On-Going Updates:

Infinity Park. Linda Cassaday, Deputy City Manager and Finance Director, said the first home game of the rugby season is February 28. The lead-in for the game will be a match between East High School and Regis High School. A new ticket booth will be erected in the stadium gateway. On May 30, the Event Center will host the Denver Post Travel Expo, which will rent out the full facility.

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9. Public Comments. There was none.

10. Council Reports. Council Member Allen thanked everyone who attended the Chamber of Commerce's Member Appreciation luncheon. Mayor Dunafon congratulated Josh Bertrand, who saved a man's life in the City after attending the Police Department's Run, Hide, Fight, Treat training.

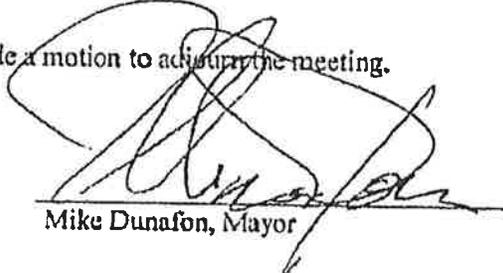
11. Other Business. There was no other business.

RECORD OF PROCEEDINGS

February 3, 2015 Minutes
Page 4 of 4

12. Adjournment. Council Member Allen made a motion to adjourn the meeting.

Dated: April 7, 2015


Mike Dunafon, Mayor

ATTEST:

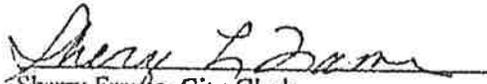

Sherry Franke, City Clerk

EXHIBIT 2

RECORD OF PROCEEDINGS

MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL OF GLENDALE, COLORADO

April 7, 2015

Mayor Mike Dunafon led the Pledge of Allegiance.

1. Call to Order and Roll Call. Mayor Mike Dunafon called the regular meeting of the City Council to order. Sherry Frame, City Clerk, called the roll. The following Council Members were present: Mayor Mike Dunafon and Council Members Jeff Allen, Scott Franssen, Joe Giglio, Dario Katardzic, and Doris Rigoni. Mayor Pro Tem Paula Bovo was absent and excused. City Manager Jerry Peters, City Attorney Matt Giacomini, and other members of the City staff also attended the meeting.

2. Approval of Agenda. Council Member Dario Katardzic moved to approve the agenda. This particular motion requires no second. The motion passed unanimously.

3. Public Comments. There were none.

4. Consent Item

- a. Minutes of the February 3, 2015 Regular Meeting
- b. Minutes of the March 10, 2015 Regular Meeting
- c. Minutes of March 17, 2015 Regular Meeting
- d. Renewal of Hotel and Restaurant Liquor License for Silvi's Kitchen at Cityset LLC d/b/a Silvi's Kitchen, 686 South Colorado Blvd.
- e. Renewal of Hotel and Restaurant Liquor License, Jax Fish House City Set LLC d/b/a Jax Fish House, 650 South Colorado Blvd., Bldg. A
- f. Renewal of Liquor Licensed Drug Store License for Dillon Companies Inc., d/b/a King Soopers #124, 4600 Leetsdale Drive
- g. Renewal of Liquor Licensed Drug Store License for Target Corporation d/b/a Super Target T 1306, 4301 East Virginia Avenue
- h. Renewal of Tavern Liquor License for Bavarian Inn Restaurant Incorporated d/b/a Shotgun Willies, 490 South Colorado Blvd.
- i. National Kids to Parks Day Proclamation

Council Member Allen moved to approve the consent items. Council Member Rigoni seconded the motion. The motion then passed unanimously.

5. Transfer of Ownership. Denver Kosher LLC d/b/a Eastside Kosher Deli, 499 South Elm Street. Mayor Dunafon read the matter into the record by title only, all Council Members having received copies of the same.

Chuck Line said East Side Kosher Deli transferred from ESKD, LLC, which was owned and operated by Michael Schreiber, to Denver Kosher, LLC, which is owned and operated by Joshua Horowitz. Mr.

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Line said all application documents are in order, and a criminal background check showed no criminal activity for Joshua Horowitz.

Dan Carr (#8224) appeared as counsel for the applicant. He said the business has been operational for approximately six weeks, as it had received a temporary liquor license. All previous staff has remained to work for Mr. Horowitz, so everyone serving alcohol has done so for the past ten years.

Joshua Horowitz appeared before Council and said he relocated from New York on Christmas weekend. He has been in training for two months.

Council Member Allen moved to approve the Transfer of Ownership, Denver Kosher LLC d/b/a Eastside Kosher Deli, 499 South Elm Street. Council Member Katardzie seconded the motion. The motion then passed unanimously.

6. Public Hearing on Special Event Permit for Hellenic Orthodox Community of Denver for the Greek Festival on June 19, 20, and 21, 2015, at 4610 East Alameda Avenue. Mayor Dunafon read the matter into the record by title only, all Council Members having received copies of the same. The Mayor opened the public hearing.

Chief William Haskins said the Police Department completed a background investigation on the Special Events Permit application for the 50th anniversary of the Greek Festival on June 19-21, 2015. The President is George McCoy, and the Event Manager is Thomas Peter Nicholas. A criminal check shows no current criminal activity by either party. A check with the State of Colorado Liquor License Enforcement Division shows no record of any violations against the Assumption Greek Orthodox Cathedral. All necessary paperwork is in order and filed with the State of Colorado. Based on the background investigation and the consent of the Mayor and City Council, Chief Haskins recommended approval of the Special Events Permit for the Hellenic Orthodox Community of Denver.

Thomas Nicholas, Event Manager, appeared before Council. He said plans for the 2015 festival include roaming musicians, a "Greek Iron Chef" competition, and a commemorative coin for \$50. The largest change will be the appearance of the cathedral. Mr. Nicholas thanked the Glendale Police Department for their help with the event process.

The Mayor closed the public hearing. Council Member Rigoni moved to approve the Public Hearing on Special Event Permit for Hellenic Orthodox Community of Denver for the Greek Festival on June 19, 20, and 21, 2015, at 4610 East Alameda Avenue. Council Member Franssen seconded the motion. The motion then passed unanimously.

7. Public Hearing on Special Event Permit for Hellenic Orthodox Community of Denver for the IIIIP Commemorative Dinner on May 30, 2015, at 4610 East Alameda Avenue. Mayor Dunafon read

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the matter into the record by title only, all Council Members having received copies of the same. The Mayor opened the public hearing.

Chief William Haskins said the Police Department completed a background investigation on the application for a Special Event Permit for the Hellenic Orthodox Community of Denver for the HHIP Commemorative Dinner on May 30, 2015. The President is Bill Kullergis, and the Event Manager is Elaine Kusulas. A criminal check showed no current criminal activity for either party. A check with the State of Colorado Liquor Enforcement Division shows no record of any violations against the Assumption Greek Orthodox Cathedral. All necessary paperwork is in order and filed with the State of Colorado. Based on the investigation and the consent of the Mayor and City Council, Chief Haskins recommended approval of the Special Events Permit for the Assumption Greek Orthodox Cathedral.

Elaine Kusulas appeared before Council. She explained that HHIP stands for Heritage Preservation Project, one of the ministries of the Cathedral. The intention for the dinner is to honor the founders and volunteers who have helped with the Greek Festival over the past 50 years.

The Mayor closed the public hearing. Council Member Katardzic moved to approve the Public Hearing on Special Event Permit for Hellenic Orthodox Community of Denver for the HHIP Commemorative Dinner on May 30, 2015, at 4610 East Alameda Avenue. Council Member Rigoni seconded the motion. The motion then passed unanimously.

8. James Brown, New Manager's Registration, Chatham Cherry Creek HP Leaseco LLC d/b/a Hyatt Place Denver/Cherry Creek, 4150 East Mississippi Avenue. Mayor Dunafon read the matter into the record by title only, all Council Members having received copies of the same.

Chief Haskins said the Police Department completed a background check for a change of manager for Chatham Cherry Creek HP Leaseco LLC d/b/a Hyatt Place Denver/Cherry Creek. The new Operating Manager is James Barry Brown of Evergreen, Colorado, who will replace Sean Keating. A criminal check showed no current criminal activity by James Brown. A check with the State of Colorado Liquor Enforcement Division showed no record of complaint against Hyatt Place Denver/Cherry Creek or James Brown. Based on the background investigation and with the consent of the Mayor and City Council, Chief Haskins recommended approval of the application for change of manager.

James Barry Brown appeared before Council. Mr. Brown said he just relocated from Philadelphia in October. He anticipates no changes at the hotel.

Council Member Allen moved to approve James Brown, New Manager's Registration, Chatham Cherry Creek HP Leaseco LLC d/b/a Hyatt Place Denver/Cherry Creek, 4150 East Mississippi Avenue. Council Member Franssen seconded the motion. The motion then passed unanimously.

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9. Timothy Wentzlaff, New Manager's Registration, Summit Hotel TRS 094, LLC, d/b/a Staybridge Suites Cherry Creek, 4220 East Virginia Avenue. Mayor Dunafon read the matter into the record by title only, all Council Members having received copies of the same.

Chief Haskins said a background check was completed for a change of manager for Summit Hotel TRS 094, LLC, d/b/a Staybridge Suites Cherry Creek. The new Operating Manager is Timothy Wentzlaff of Ft. Collins, Colorado, who will replace Aaron Williams. A criminal check showed Mr. Wentzlaff pled guilty to Harassment charges in June 2010. After Mr. Wentzlaff served one year of probation, the case was closed. A check with the State of Colorado Liquor Enforcement Division showed no record of complaint against Staybridge Suites Cherry Creek or Timothy Wentzlaff. Based on the background investigation and with the consent of the Mayor and City Council, Chief Haskins recommended approval of the application for change of manager.

Timothy Wentzlaff appeared before Council. He said he has been in the hotel business for five years. He started as a bartender in Ft. Collins and worked his way up to general manager.

Council Member Allen moved to approve Timothy Wentzlaff, New Manager's Registration, Summit Hotel TRS 094, LLC, d/b/a Staybridge Suites Cherry Creek, 4220 East Virginia Avenue. Council Member Franssen seconded the motion. The motion then passed unanimously.

10. Reappointment of Certain Planning Commissioners. Mayor Dunafon read the matter into the record by title only, all Council Members having received copies of the same.

Chuck Line said the terms of three Planning Commissioners expire in April 2015: Elizabeth Bonney, Storm Gloor, and Tyler Mintz. Mr. Line said Ms. Bonney and Mr. Mintz were present at the meeting; Storm Gloor was unable to attend because of the birth of his new baby.

Council Member Rigoni moved to reappoint to the Elizabeth Bonney, Storm Gloor, and Tyler Mintz to the Planning Commission, each for a three-year term -- to April 2018. Council Member Allen seconded the motion. The motion then passed unanimously.

11. Discussion Items

a. Review of the Next City Council Meeting Agenda. Council reviewed the May 5, 2015 agenda. The City Clerk will add approval of the execution of the Intergovernmental Agreement between the City of Glendale and the Glendale Urban Renewal Authority to the agenda.

12. On-Going Updates:

- a. DRCOG. No report.
- b. CML. Council Member Rigoni mentioned the CML conference in June.

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c. Transportation Solutions. Council Member Allen spoke of the successful Road Ahead event and thanked the City Staff and Council Members who attended.

d. Green Committee. No report.

e. Infinity Park. Linda Cassaday said the weekend of April 18 is the first non-rugby weekend since the beginning of the spring season. The Event Center has met 76% of its sales goal for the year.

f. Glendale 180. Mike Gross said he had received many requests for information and contacts since the press event on the project.

13. Department Reports. Josh Bertrand, Public Works Director, said East Mississippi Avenue from Cherry Street to the City border and the CitySet area will be repaved the end of the month. Nicole Limoges said the YMCA had gained 77 new member and 55 drops, for a net of 22. The net for the quarter is 55 new memberships, which is 14 more than the goal. She said at the end of March the YMCA broke their 3,000-members goal and saw a 6% growth from the first quarter of 2014. Ms. Limoges thanked the Police Department for their assistance with the Easter event. Chuck Line said the Planning Commission agenda for April includes a Chick-fil-A site plan. Chick-fil-A plans for this site to be their No. 1 site in the west.

14. Public Comments. There was none.

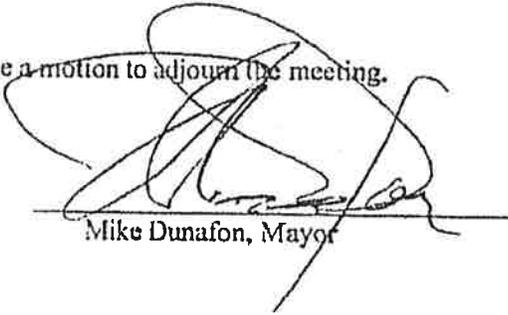
15. Council Comments. Council Members voiced their pride in the recent Glendale 180 press event, especially the job done by Linda Cassaday as event emcee. Council Member Allen thanked Diane Anderson and her team for work on branding. Mayor Dunafon said attendance at the rugby games is up 160%; 90 nations around the world are watching rugby. The Mayor voiced his pride with the City and its staff.

16. Other Business. There was no other business.

17. Items for Press Release. There was none.

18. Adjournment. Council Member Allen made a motion to adjourn the meeting.

Dated: May 27, 2015


Mike Dunafon, Mayor

ATTEST:


Sherry Frané, City Clerk

EXHIBIT 8



Jefferson County, Colorado

Clerk & Recorder Web Access

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Marriage Document Access

Criteria: Grooms Names Like DUNAFON Brides Name Like MATTHEWS
Showing Records 1 through 1 (1 records found as of 04/28/2016 03:37:21 PM [count again](#))

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Sort By:

#	<input type="checkbox"/>	License #	Type	Application Date	Date Of Marriage/Union	Groom's / 1st Party Name	Bride's / 2nd Party Name
1	<input type="checkbox"/>	0039683	-MARRIAGE APPLICATION	07/20/2015	07/25/2015	DUNAFON MICHAEL KENNETH	MATTHEWS DEBORAH ANN

Other Options

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Sort By:

EXHIBIT 9

Agenda
Glendale City Council
Regular Meeting
April 7, 2015

PLEASE TURN OFF ALL CELLULAR TELEPHONES AND/OR AUDIBLE PAGERS

4/3/2015 17:43PM

4:30 p.m. Study Session

7:00 p.m. Regular Meeting

Pledge of Allegiance

1. Call to Order and Roll Call
2. Approval of Agenda
3. Public Comments (three-minute-per-person time limit)
4. Consent Item
 - a. Minutes of the February 3, 2015 Regular Meeting – Tab G
 - b. Minutes of the March 10, 2015 Regular Meeting – Tab H
 - c. Minutes of March 17, 2015 Regular Meeting – Tab I
 - d. Renewal of Hotel and Restaurant Liquor License for Silvi's Kitchen at Cityset LLC d/b/a Silvi's Kitchen, 686 South Colorado Blvd. – Tab J (Chief Haskins)
 - e. Renewal of Hotel and Restaurant Liquor License, Jax Fish House City Set LLC d/b/a Jax Fish House, 650 South Colorado Blvd., Bldg. A – Tab K (Chief Haskins)
 - f. Renewal of Liquor Licensed Drug Store License for Dillon Companies Inc., d/b/a King Soopers #124, 4600 Leetsdale Drive – Tab L (Chief Haskins)
 - g. Renewal of Liquor Licensed Drug Store License for Target Corporation d/b/a Super Target T 1806, 4301 East Virginia Avenue – Tab M (Chief Haskins)
 - h. Renewal of Tavern Liquor License for Bavarian Inn Restaurant Incorporated d/b/a Shotgun Willies, 490 South Colorado Blvd. – Tab N (Chief Haskins)
 - i. National Kids to Parks Day Proclamation – Tab O (Jerry Peters)
5. Transfer of Ownership, Denver Kosher LLC d/b/a Eastside Kosher Deli, 499 South Elm Street – Tab P (Chuck Line)

6. Public Hearing on Special Event Permit for Hellenic Orthodox Community of Denver for the Greek Festival on June 19, 20, and 21, 2015, at 4610 East Alameda Avenue – Tab Q (Chief Haskins)
7. Public Hearing on Special Event Permit for Hellenic Orthodox Community of Denver for the HHP Commemorative Dinner on May 30, 2015, at 4610 East Alameda Avenue – Tab R (Chief Haskins)
8. James Brown, New Manager’s Registration, Chatham Cherry Creek HP Leaseco LLC d/b/a Hyatt Place Denver/Cherry Creek, 4150 East Mississippi Avenue – Tab S (Chief Haskins)
9. Timothy Wentzlaff, New Manager’s Registration, Summit Hotel TRS 094, LLC, d/b/a Staybridge Suites Cherry Creek, 4220 East Virginia Avenue – Tab T (Chief Haskins)
10. Reappointment of Certain Planning Commissioners – Tab U (Chuck Line)
11. Discussion Item
 - a. Review the Next City Council Meeting Agenda for May 5, 2015 – Tab V
12. On-Going Updates
 - a. Denver Regional Council of Governments – DRCOG (Paula Bovo, Doris Rigoni)
 - b. Colorado Municipal League – CML (Paula Bovo, Doris Rigoni)
 - c. Transportation Solutions (Jeff Allen)
 - d. Regional Transportation District – RTD (Scott Franssen)
 - e. Green Committee (Dario Katardzic)
 - f. Infinity Park (Linda Cassaday)
 - g. Glendale 180 (Mike Gross)
 - h. Technology & Communications (Paula Bovo, Dario Katardzic)
13. Department Reports
14. Public Comments (three minute per person time limit)
15. Council Reports
16. Other Business
17. Items for Press Release
18. Adjournment

Glendale Urban Renewal Meeting Follows.

EXHIBIT N

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

May 3, 2016 Minutes of the Glendale City Council

RECORD OF PROCEEDINGS

MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL OF GLENDALE, COLORADO

May 3, 2016

Mayor Mike Dunafon led the Pledge of Allegiance.

1. Call to Order and Roll Call. Mayor Dunafon called the regular meeting of the Council to order. Sherry Frame, City Clerk, called roll. The following Council Members were present: Mayor Mike Dunafon and Council Members Scott Brock, Storm Gloor, Dario Katardzic, Lindsey Mintz, Scott Norquist, and Doris Rigoni. City Manager Jerry Peters, City Attorneys Jeff Springer and Matt Giacomini, and members of City Staff also attended the meeting.

2. Approval of Agenda. Council Member Katardzic moved to approve the agenda. This particular motion requires no second. The motion passed unanimously.

3. Public Comments. Susan Livingston, real estate developer with a Masters degree in urban planning, from the Belcaro neighborhood addressed Council. She spoke against the building of any highrise at Colorado Blvd. and Virginia Avenue, especially without consideration of the impact on transportation and pedestrian plans. Jeff Mauck, acting HOA President of the Belcaro Park Homeowners Association, said that the members of the association, at a meeting on April 19, 2016, said they feel a highrise would be outside the current zoning. He said there are already traffic issues; the addition of a highrise would make the area overdense and overpopulated and would adversely affect the sunlight in the neighborhood. This project would need to have an impact study done. Dan Fead, also from the Belcaro neighborhood, said he enjoys the walkability and parking at the Cityset development and is excited about the Glendale 180 project. He said that a highrise in the area would adversely affect both CitySet and the Glendale 180.

4. Presentation on the City of Glendale by Chuck Bonniwell of the Glendale Cherry Creek Chronicle. Chuck Bonniwell, publisher of the Glendale Cherry Creek Chronicle, gave a presentation to the new Council Members on the history of Glendale, with a focus on Glendale's fight against annexation by Denver. His historic account named key players and property owners, starting in the 1800's, such as Levi Booth and Mary Cawker. Denver and Glendale were formed less than a year apart, in 1858 and 1859, respectively. Glendale was named in the 1880's for the Scottish word for valley "glen," and the English word for valley "dale," or "Valley Valley."

Mr. Bonniwell said that Glendale's greatest strength was its water. It sits in an huge drainage system in the midst of the Cherry Creek Valley (an enormous amount of water, constantly running under the streets -- narrowest in Glendale at Colorado Blvd.). Glendale was incorporated in 1952 but existed for nearly 100 years before. Four Mile was sold by Mary Cawker, a vivacious single mother, who danced, drank, and gambled, to Levi Booth, a God-fearing, Bible-toting teetotaler, natural born leader, and the first law graduate of the University of

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Michigan, who dreamed of an agrarian empire. He bought 600 acres in the western half of Glendale and formed the Glendale Grange and railed on the urban. Mary Cawker built a home near the Greek Church and bought a land in the eastern half of Glendale. In 1884, Mary did the Jersey Subdivision, where land was snapped up due to Denver's overregulation of the dairy industry. Whatever Denver rejected and scorned, Glendale adopted and prospered from. Bars and restaurants and gas stations opened to large amounts of traffic on Colorado Blvd.

In the 1940's, there were dairies, the Four Mile Ranch, western saloons (the Frontier and the Cowshed) with square dancing and hayrides. The Stock Show was the greatest event of the year.

Denver, who had broken away from Arapahoe County in 1903, boomed, and nearby developments such as Virginia Village and Virginia Vale hooked up to Denver water. Tired of little Glendale, an annexation map was proposed to include Glendale. The developer included many voters who had not lived in Denver for a year and were not eligible to vote, so the annexation failed.

Glendale cut down its boundaries; it previously ran from Quebec to Colorado Blvd. Landowners in Glendale could opt in or out and be included in Denver or in Glendale. The new owners of the Four Mile House opted out of Glendale. Four Mile was eventually bought by the City and County of Denver and became a City park and became *Denver's oldest house*, where *Denver's* western heritage began.

Even after Glendale incorporated in 1952, Denver came at it again and again. In 1971, Denver's highest priority was to destroy Glendale. It went to the legislature to change the law to have a combined vote with Glendale and Denver. Frieda Poundstone from Greenwood Village proposed a constitutional amendment to not allow the combining of the vote of two entities.

In the 1970's, Denver began to limit liquor licenses. In Glendale, liquor licenses were freely given to those who applied. In the late 1980's and early 1990's, a new group of individuals came to Glendale who wanted to change the town into one where people owned homes and were family friendly. Mayor Steve Ward killed one liquor license after another, "shooting" off a small cannon on his desk every time a liquor license was denied. Nearly 100 liquor licenses went down to a mere few. Mayor Joe Rice followed, with the intention of closing Shotgun Willie's, a "distant relative" of the operations of Mary Cawker. The Glendale Tea Party was formed to fight back.

In 1998, City leaders envisioned a downtown in the same location that boomed in the 1970's and 1980's. Mr. Bonniwell welcomed the new Council Members and told them that the fight for Glendale is not over. Tough battles for Glendale are still ahead.

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5. Consent Items

- a. Minutes of the April 19, 2016 Regular Meeting
- b. Renewal of Hotel and Restaurant Liquor License for El Torito #3 Incorporated d/b/a El Torito #3, 4978 Leetsdale Drive
- c. Renewal of Tavern Liquor License for Platform T CitySet d/b/a Platform T, 682 South Colorado Blvd., Bldg. C
- d. Renewal of Hotel and Restaurant Liquor License, Cuba Cuba Sandwicheria, LLC, d/b/a Cuba Cuba Sandwicheria, 654 South Colorado Blvd.

Council Member Katardzic moved to approve the consent items. Council Member Mintz seconded the motion. The motion then passed unanimously.

6. Public Hearing on the Concurrent Preliminary and Final Site Development Plan and Special Use Permit for Edgemark Self-Storage and Retail Development at 320 South Birch Street. Mayor Dunafon read the matter into the record by title only, all Council Members having received copies of the same. The Mayor opened the public hearing.

Chuck Line, Deputy City Manager, said the site plan encompasses a 96,200 square foot building that would house self storage, with a separate building on Leetsdale with 3,584 square feet in retail or quick service restaurant space. Preliminary and final site plans were submitted concurrently. Mr. Line said the building complies with all height, density, set-back, and parking requirements. The roof ridge line approved by the Planning Commission was 47' but must go to 49' because of the grade of the exterior structure – still compliant with City code. The wall line is roughly 43' but could vary up to 45'. Mr. Line said the Planning Commission unanimously recommended approval of the preliminary and final site plans, with Staff recommendations. The approval must also include the inclusion of a special use permit, as the floor area associated with any one principal permitted use cannot be greater than 75% without special review. In this case, the self-storage use exceeds 75%. Landscaping meets 20% and is slightly under 25% by 47 sq. ft. Mr. Line discussed the grade of the lots, a 30' retaining wall to allow a more gradual change of grade from Leetsdale, and the drivable grade from the back of the Penthouse lot to the storage building. This will allow better access and turn-around for emergency vehicles. He said the south parcel can never become a standalone site, as it does not have street or water access without the granting of easements. Mr. Line answered Council's question about the ability of an emergency vehicle to access the site; he said the 30' access is sufficient. Mr. Line said the earth tones of the building will match other buildings in the neighborhood. The use of glass also sets it apart from other storage facilities. Captain Mike Gross said the glass allows surveillance and natural access control. Josh Bertrand, Director of Public Works, said an 8" water line will be laid along Birch Street to connect to a water main on Leetsdale, at the owner's expense.

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Richard Sapkin of Edgewater Development appeared before Council. He said the grading of the site is a difficult one, ignored over the years. The concept of storage units has changed over the years, allowing renters to store their bikes and summer clothes in the winter and switch from skis and equipment in the summer. Mr. Sapkin said the site is high-end, safe, clean, and open. Conference rooms can be used for viewing and sorting.

Christopher Keaton from Galloway appeared before Council. He said the building will be situated on the back portion of the site, which among other things will provide access to connect Birch Street from north to south. He said the building is one of the first of its kind in the product type and is now a benchmark for the industry. Council Member Gloor asked what type of retail would be in a part of the project, and Mr. Keaton said he did not yet know. Mr. Keaton confirmed that the building now on the site will be razed.

The Mayor closed the public hearing.

Mayor Pro Tem Rigoni moved to approve the Concurrent Preliminary and Final Site Development Plan and Special Use Permit for Edgemark Self-Storage and Retail Development at 320 South Birch Street with Staff recommendations. Council Member Brock seconded the motion. The motion then passed unanimously.

7. Consider Ethics Complaint Against Mayor Mike Dunafon in Consideration of City Attorney's Report. Mayor Dunafon stepped down from the dais and handed the meeting over to Mayor Pro Tem Rigoni. Jeff Springer, City Attorney, confirmed that Council Members had received a copy of a report dated April 29, 2016 from Attorney Nathan Chambers. He said that a complaint dated January 29, 2016, from the Colorado Ethics Watch was provided to the then Mayor Pro Tem, Paula Bovo. The Complaint involved a hearing that took place on February 3, 2015, nearly one year previously, and meeting on April 7, 2015. Mr. Springer said that, as City Attorney, he is charged with enforcing the City's ordinances. The Complaint alleges that the Mayor violated Glendale Code §2.14.040B, which provides that "No elected official, officer, board member, employee, or independent contractor shall perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative or agent," which pertained to the approval of a site plan for Smoking Gun at 492 South Colorado Blvd. He said the Complaint alleges that on April 7, 2015, in violation of the same Code, the Mayor voted on a Consent Item approving the liquor license for the Bavarian Inn. Mr. Springer said that he reviewed the Complaint and found that the allegations did not appear to be accurate and concluded the Complaint may also implicate Glendale Code §12-14-040E, "The City Council may dismiss frivolous complaints submitted by persons under this chapter. Complaints dismissed as being frivolous shall be maintained confidential by City Council." He said that he believed Council should receive a report from a factual and legal standpoint so it could evaluate whether

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or not the Complaint is frivolous. If the Complaint is deemed to be frivolous by Council, Council may dismiss it. If Council finds the Complaint not frivolous, a hearing would be scheduled, where evidence would be presented, and Council would determine if a violation had taken place.

Mr. Springer introduced Attorney Nathan Chambers and reviewed his credentials to present on the matter and his background. Nathan Chambers told Council that the Complaint alleged that Mayor Dunafon had participated in votes where “he had a personal financial interest.” Mr. Chambers said he was tasked by Mr. Springer to investigate the Complaint for merit. To do so, he reviewed the Complaint, Planning Commission agendas and minutes, and Council agendas and minutes. He also listened to the recordings of the meetings and conducted some interviews. The Complaint involves Charter §4.27 and Code Chapter 2.14. Mr. Chambers said that the word “substantial” in Chapter 2.14.040B is important. He said the Complaint is scant in detail, lacking in specificity, and is especially lacking in any specificity regarding what the Mayor’s alleged personal financial interest was in the matters, apart from the allegation that the Mayor’s wife is the owner of the Smoking Gun and the Bavarian Inn. Mr. Chambers found from records filed at the Jefferson County Clerk and Recorder’s Office that the Mayor was not married at the time. The Mayor was not acting at the same as “counsel, consultant, representative or agent” of either entity. Mr. Chambers found no evidence that the Mayor had any financial interest, let alone substantial financial interest in the entities. He said the Mayor had no ownership interest in either the Smoking Gun or the Bavarian Inn. Mr. Chambers said that he talked to an accountant who is familiar with the financial records of the entities and individuals, who confirmed there were separate checking accounts; taxes were filed separately; there was no comingling of funds. Mr. Chambers said that, importantly, the Complaint does not allege what the financial interest was. The Complaint makes a reference to the Colorado Revised Statutes, but it is highly questionable whether the referenced statute has any application in this case since Glendale is a home rule city. Nevertheless, he did review the statute and determined that the statute was not violated. As to the question of whether the Complaint is frivolous, he said that the City’s Charter and Ordinances do not define the word “frivolous,” but the word has been defined many times by the courts. A claim is frivolous if the proponent can present no rationale argument based upon evidence or the law to support the claim. Mr. Chambers said he has discovered no evidence to support the claim, so he believes that the January 29, 2016 Complaint is indeed frivolous.

Mr. Springer asked Mr. Chambers if he had found that the Mayor and his present wife filed taxes as non-married individuals, filing separately, as opposed to married individuals, filing separately. Mr. Chambers said yes.

Mr. Chambers said the second allegation in the Complaint stated that the Mayor voted on a Consent Agenda item at the April 7, 2015 Council meeting regarding the renewal of the Bavarian Inn/Shotgun Willie’s liquor license renewal. He said this was again an unspecified allegation of

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a personal financial interest. Mr. Chambers said the Mayor does not vote on Consent Items and made no action other than calling out the item on the agenda. Mr. Chambers said he deems that allegation of the Complaint also frivolous. Mr. Springer asked Mr. Chambers whether he had determined that after the February 3, 2015 vote on the Smoking Gun there was a revote on the site plan in the matter on March 17, 2015 to eliminate any ambiguity, where the Mayor did not vote. Mr. Chambers reviewed the actions regarding the Smoking Gun site plan approval at the meeting on February 3, 2015, where it was seemed apparent that Council and Staff deemed there was a 3-3 tie. He said the Mayor returned to the dais, after stating that he did not have an ownership interest in the matter and had secluded himself out of an abundance of caution. There was no objection to the vote. At the March 17, 2015 meeting, Mr. Springer said he listened to the recording, and it was confusing and there was some ambiguity. He suggested that Council vote again. The vote passed unanimously by those present. A single dissenting vote was registered for a City Council Member who was not present, who had voted against approving the site plan at the February 3, 2015 meeting.

Council Member Norquist said that the importance of whether the Mayor and his now-wife filed taxes single is that, if they filed single and jointly, they could be holding themselves out as being married by common law under Colorado law.

Council Member Katardzic moved to dismiss the ethics Complaint against Mayor Dunafon, finding it frivolous, based upon the oral report and findings, analysis, and conclusions from Nathan Chambers.

Attorney Springer said that under the Charter the Mayor can only vote in the case of a tie, but Mayor Pro Tem can vote, even sitting for the Mayor.

Council Member Brock seconded the motion. The City Clerk took a roll call vote:

Council Member Scott Brock voted yes, to dismiss the Complaint as frivolous.
Council Member Storm Gloor voted yes, to dismiss the Complaint as frivolous.
Council Member Dario Katardzic voted yes, to dismiss the Complaint as frivolous.
Council Member Lindsey Mintz voted yes, to dismiss the Complaint as frivolous.
Council Member Scott Norquist voted yes, to dismiss the Complaint as frivolous.
Mayor Pro Tem Doris Rigoni voted yes, to dismiss the Complaint as frivolous.

The motion passed unanimously, 6-0.

The Mayor returned to the dais. He thanked Council for its vote of confidence. He said the Council does not turn down site plans that do not ask for variances. The Mayor said we are getting to a point in this country where you will not find people willing to run for office because

RECORD OF PROCEEDINGS

May 3, 2016 Minutes
Page 7 of 8

of actions such as this Complaint. He said he believes that the Colorado Ethics Watch is a paid-for-pull organization; reports have come out that say that 97% of their complaints are overturned.

8. Discussion Item: Review the Next City Council Meeting Agenda. Council reviewed the draft June 7, 2016 meeting agenda.

9. On-Going Updates

- a. DRCOG. Council Member Gloor attended the recent DR-COG meeting, where the key discussion was Car-X, which looks ahead at transportation needs 10-20 years from now.
- b. CML. No report.
- c. Transportation Solutions. No update.
- d. RTD. No report.
- e. Green Committee. No update.
- f. Infinity Park. Linda Cassaday, Deputy City Manager and Finance Director, mentioned the recent National Small College rugby championship. Upcoming is the RugbyTown Showdown, which is the clashing of all area teams. The Glendale Women will be playing against Black Ice, a local Denver team, and the Raptors will play the Barbarians in the final game of the regular season for the Pacific Rugby Premiereship. The championship game will be on the following weekend, May 14.
- g. Glendale 180. No report.
- h. Technology and Communication Committee. No report.

10. Department Reports. Josh Bertrand, Director of Public Works, said the annual traffic study was underway. The South Cherry Street and Leetsdale Drive widening project will begin later in May. Nicole Limoges, Executive Director of the YMCA, said the Y exceeded its April goal, over by 30 memberships. The total membership is 3,191. Chief Joe Haskins said Captain Mike Gross was named the CIRSA 2015 Safety Manager of the Year.

11. Public Comments. Nasrin Kholghy appeared before Council. She said talk of building a 60-story highrise never happened. She said she did ask for residential units. She said the area that M.A.K. owns next to Staybridge would be a good place for residential, which would not interfere. She asked why the City says that they are holding up the building of Glendale 180.

The Mayor said that M.A.K. has filed three lawsuits against the City. Those lawsuits must be adjudicated. The City has produced 98,000 to 100,000 document pages for open records requests, utilizing public funds.

12. Council Reports. Council Member Gloor said Glendale would have a team in the Colfax Marathon on May 15.

RECORD OF PROCEEDINGS

May 3, 2016 Minutes
Page 8 of 8

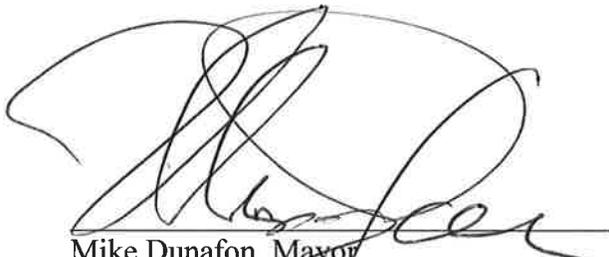
13. Other Business. There was none.

14. Items for Press Release. There were none.

15. Executive Session. Not called.

16. Adjournment. The meeting was adjourned, after a motion from Council Member Katardzic.

Dated: 5/7/16



Mike Dunafon, Mayor

ATTEST:



Sherry Frame, City Clerk

EXHIBIT O

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

Jefferson County Marriage Record



Jefferson County, Colorado Clerk & Recorder Web Access

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Marriage Document Access

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0039683

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You do not have permission to view the image for this record.

General

Certificate Number: 0039683

Return Number: 20152054

Party One Name: DUNAFON MICHAEL
KENNETH

Party One Last Name At Birth: DUNAFON

Party Two Name: MATTHEWS DEBORAH ANN

Party Two Last Name At Birth: MATTHEWS

Date of Application: 07/20/2015

Date of Marriage: 07/25/2015

Book:

Page:

Image:

EXHIBIT P

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

Resolution No. 7, Series of 2018

CITY OF GLENDALE, COLORADO

RESOLUTION NO. 7
SERIES OF 2018

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GLENDALE, COLORADO
REVIEWING AND RECTIFYING THE CITY COUNCIL MINUTES FROM MARCH 2, 2010

WHEREAS, the Section 4.27a of the Glendale City Charter requires the City Council to keep minutes in the English language and signed by the Presiding Officer and Clerk of the meeting at which the minutes are approved; and,

WHEREAS, except for rare exceptions, the City Council has refrained from changing or correcting minutes approved by prior City Councils; and,

WHEREAS, the City has received a request from the counsel for a former City Council member requesting the City Council review the minutes of the March 2, 2010 City Council meeting, specifically a liquor license renewal for Bavaria Inn; and,

WHEREAS, the City Council believes the use of such a rare exception is to prevent injustice if the incorrect minutes are being used improperly by third parties to proffer inferences that are inaccurate; and,

WHEREAS, after reviewing a transcript from the official recording of the meeting, the City Council believes that the minutes on this agenda item are inaccurate and wish to correct the inaccuracy; and,

WHEREAS, because the majority of City Council members were not on the Council in 2010, and so that there is no question as to the contents of the agenda item, the City Council will only correct the inaccuracies with an exact transcript.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Glendale, Colorado:

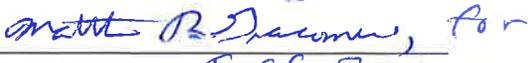
The original minutes for the March 2, 2010 City Council meeting as shown in Exhibit A are to be corrected to read as provided in Exhibit B. By approval of this resolution, the minutes in Exhibit B are to be signed by the Presiding Officer and the City Clerk and now be the official record of the March 2, 2010 City Council meeting.

READ, APPROVED, AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF GLENDALE,
COLORADO THIS 1st DAY OF May 2018.



Doris Rigoni, Mayor Pro Tem

APPROVED AS TO FORM:



City Attorney Self Springer

ATTEST:



Veronica Marvin, City Clerk

Exhibit A

MINUTES OF THE CITY COUNCIL
REGULAR MEETING
OF THE
CITY OF GLENDALE, COLORADO
March 2, 2010

Mayor Harte led the Pledge of Allegiance.

1. Call to Order and Roll Call. Mayor Larry Harte called the regular meeting of the City Council to order at 7:08 p.m. The following Councilmembers were present: Mayor Pro -- Tom Mike Dunafon, Jeff Allen, LuVerne Davenport, R. Wayne King, Pat Opper and Steven St. James. Also present were City Manager Jerry Peters, City Attorney Matt Giacomini, City Clerk Anna Fine, other members of the City staff and members of the public.

2. Approval of Agenda. Councilmember King moved to approve the agenda. Requiring no second, the motion passed unanimously.

3. Presentations.

a. Monthly YMCA Update -- Ms. Debbie Ford, Executive Director of the Glendale YMCA, introduced Mr. Jim Brown, fitness instructor, dance instructor and current United States Ballroom Dance Champion. He explained the various dance classes offered at the recreation center. Members of the audience participated in a dance lesson.

b. Cherry Creek Public School Wellness Program -- The representative did not attend the meeting.

c. Cherry Creek Stewardship Partners 2009 Run for the Watershed -- Ms. Casey Davenhall, Watershed Coordinator for the Cherry Creek Stewardship Partners, stated that the organization promotes stewardship in the Cherry Creek Basin. She announced that the Glendale team won the 2010 Spirit Duck Award for the fifty mile run.

4. Public Comments. There were no public comments.

5. Consent Item.

a. Minutes of the February 16, 2010 Regular Meeting
Councilmember Opper moved to approve the minutes. Councilmember St. James seconded the motion, which passed unanimously.

6. Renew Tavern Liquor License for Bavarian Inn Restaurant, Inc. dba Shotgun Willie's at 490 South Colorado Boulevard. Mayor Harte read the matter into the record by title only, all Councilmembers having received copies of the same. Mayor Pro Tom Dunafon and Councilmember Allen recused themselves from participation in the proceedings. City Attorney Matt Giacomini opined that it is appropriate that Mayor Pro Tom Dunafon and Councilmember Allen recused themselves from participation in the matter before the Council because they each have an ownership interest in the licensee. Police Chief Victor Ross reviewed the details of the police report and recommended approval. He noted that a number of years ago the Glendale Police Department made officers available to work special detail inside the establishment. He opined that the police presence has prevented incidents that would require police intervention. Mr. George Miller, Operating Manager, reviewed the details of the tavern's operations. He thanked the Glendale Police Department for working with establishment to prevent problems. Mr. Miller stated that business is very good. Councilmember Opper moved to renew the Tavern Liquor License for Bavarian Inn Restaurant, Inc. dba Shotgun Willie's at 490 South Colorado Boulevard. Councilmember St. James seconded the motion, which passed unanimously.

7. Renew Hotel and Restaurant Liquor License for Gunther Toody's LLC dba Gunther Toody's Diner at 4500 East Alameda Avenue. Mayor Harte read the matter into the record by title only, all Councilmembers having received copies of the same. Police Chief Victor Ross reviewed the details of the police report and recommended approval. Ms. Ann Stalker, Operating Manager, stated that business has increase during the past year. Councilmember Allen moved to renew the Hotel and Restaurant Liquor License for Gunther Toody's LLC dba Gunther Toody's

RECORD OF PROCEEDINGS

March 2, 2010 Minutes

Page 2 of 3

Diner at 4500 East Alameda Avenue. Councilmember King seconded the motion, which passed unanimously.

8. Renew Tavern Liquor License for GIAC and IHGR Staybridge Suites Cherry Creek dba Staybridge Suites at 4220 East Virginia Avenue. Mayor Harte read the matter into the record by title only, all Councilmembers having received copies of the same. Police Chief Victor Ross reviewed the details of the police report and recommended approval. Mr. Aaron Williams, General Manager, stated that revenues decreased during the past year. Councilmember King moved to renew the Renew Tavern Liquor License for GIAC and IHGR Staybridge Suites Cherry Creek dba Staybridge Suites at 4220 East Virginia Avenue. Councilmember St. James seconded the motion, which passed unanimously.

9. Discussion Item.

a. Review of the Next City Council Agenda. Council approved the agenda for the April 12, 2010 organizational meeting by unanimous consent.

10. On-Going Updates.

a. Denver Regional Council of Governments. Councilmember Pat Opper reported that 350 million dollars (federal funds) was allocated to redevelop Union Station (located in Denver). She stated that the 2010 Census forms would soon be in the mail. Councilmember Opper noted that 26% of the population was not counted during the 2000 Census. Ms. Opper reported on federal stimulus funds. She stated that smaller communities could unite to submit funding proposals. City Manager Jerry Peters stated that he would investigate the availability of financing.

b. Colorado Municipal League. Mr. Chuck Line reviewed medical marijuana, urban renewal and 2010 ballot issues that could have an impact on Glendale. Mr. Peters announced that the annual conference is scheduled for June 22-25, 2010 in Breckenridge.

c. GIFS Task Force. Mayor Pro Tem Dunafon reported on issues regarding tearing down the buildings on the Spanish Gate property.

d. Transportation Solutions. Councilmember Allen reported on the "Road Ahead" program and on providing additional bike racks in conjunction with the "Living Streets" program.

e. Regional Transportation District. No report.

f. Green Committee. Councilmember King stated that he and committee member Dan Van Winkle plan to attend the April 18, 2010 Earth Day Celebration at Four Mile Historic Park.

g. Fine Arts Committee. Councilmember St. James reported that upcoming classes including "Story Time Hour" for both children and seniors, "Public Speaking" and "Acting for the Camera."

h. Infinity Park. Mayor Pro Tem Dunafon stated that Infinity Park continues to thrive, attracting rugby teams from all over the world. He also reported on the "River Walk" development along the segment of Cherry Creek that runs through Glendale.

11. Department Reports. City Manager Jerry Peters thanked Mayor Pro Tem Dunafon for his leadership on the "River Walk" development project. Public Works Director Bob Taylor reported on the new emergency fire signals along Birch Street. Mr. Chuck Line reported on the upcoming Planning Commission Task Force meeting.

12. Public Comments. There were no public comments.

13. Council Reports. Councilmember Opper reported that Mr. Tom Flannigan, Chairman of the Arapahoe - Douglas Mental Health Network Board of Directors, complimented Glendale on "doing it right." Mayor Larry Harte reported that Congresswoman Diana DeGette would meet with City representatives on Monday, February 8, 2010.

14. Other Business. There was no other business.

RECORD OF PROCEEDINGS

March 2, 2010 Minutes
Page 3 of 3

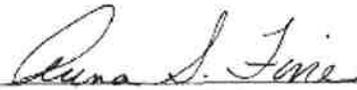
15. Items for Press Release. There were no items for press release.

16. Adjournment. There being no other business before the Council, Mayor Harte adjourned the meeting at 8:30 p.m.



Larry Harte, Mayor

ATTEST:



Anna S. Fine, City Clerk

Exhibit B

MINUTES OF THE CITY COUNCIL
REGULAR MEETING
OF THE
CITY OF GLENDALE, COLORADO
March 2, 2010
(AMENDED)

Mayor Harte led the Pledge of Allegiance.

1. Call to Order and Roll Call. Mayor Larry Harte called the regular meeting of the City Council to order at 7:08 p.m. The following Councilmembers were present: Mayor Pro – Tem Mike Dunafon, Jeff Allen, LuVerne Davenport, R. Wayne King, Pat Opper and Steven St. James. Also present were City Manager Jerry Peters, City Attorney Matt Giacomini, City Clerk Anna Fine, other members of the City staff and members of the public.

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4. Public Comments. There were no public comments.

5. Consent Item.

a. Minutes of the February 16, 2010 Regular Meeting

Councilmember Opper moved to approve the minutes. Councilmember St. James seconded the motion, which passed unanimously.

6. Renew Tavern Liquor License for Bavarian Inn Restaurant, Inc. dba Shotgun Willie's at 490 South Colorado Boulevard.

Mayor Harte "Next up to Renew Tavern Liquor License for Bavarian Inn Restaurant, Inc. doing business as Shotgun Willie's at 490 South Colorado Boulevard this is in Tab B ladies and gentleman. First before we hit Chief Ross, Mayor Pro Tem you have your finger up.

Mayor Pro Tem Dunafon: I would like to recuse myself

Mayor: Yes you would

Dunafon: inaudible

Mayor: Councilmember Allen,

Allen: Yes

Mayor: same? Ditto. Alright with that in mind we turn to you Chief Ross for an introduction please

Chief Ross: Good evening Mr. Mayor, members of the city council. As usual the police show up and the singing and dancing is now over. (crowd laughing) so (crowd laughing) took you guys awhile. We completed the background check on the application for renewal of liquor license for Bavaria Inn, uh, restaurant incorporated doing business as Shotgun Willie's. The owner is Deborah Ann Matthews. The operating manager is listed as George Miller. A criminal check was done on both Ms. Matthews and Mr. Miller found no problems or concerns we just, we checked with the state of Colorado liquor enforcement section, also found no complaints against either Shotgun Willie's, Ms. Matthews or Mr. Miller. Officers did complete a premise inspection on January 28th and found no violations and all the paperwork was in order. The call summary coming of previous twelve month period showed a number of police related calls. The great majority of those calls were routine business checks that had been requested by the business, lot checks, uh, alarms, and other assists to the business to be noted that the establishment also has officers on scheduled duty for two of their busiest nights, uh, which has also increased the number of incidents of being logged in and reported by the officers that's also prevented a number of calls for service, uh, to dispatch. There were no calls of serious nature reported and no liquor violations reported inside during this period. Based on those background investigation and pending council comments, I would, uh, recommend approving this liquor license renewal for Bavaria Inn Restaurant doing business as Shotgun Willie's. Mr. Miller is present this evening to address council.

Harte; Mr. Miller, where are you? Come on up to the podium if you would please sir, introduce yourself for the record, but before we do, Chief, could you comment, on, um, you know it's a pretty high profile place, being on Colorado Blvd and all, your report there mentioned kind of a positive police presence in the attitude that we take toward that, could you comment on that for benefit of the rest of the council, it's, I think it's noteworthy.

Chief: Well I think really, really (inaudible) started doing a number of years ago, um, was, we, we made the officers available to special detail inside the club, um, because 9 times out of 10 the uniformed officer is able to uh, just his presence in the club is able to deter a lot of problems and whatever else happens, um, and it also, it adds 2 extra people on the uh, on the, on the street or annex routes around the street (inaudible) in that area down there, um that leaves the rest of the officers throughout the city to handle other calls that they would normally be having to go down and handle there cuz they hadn't, they hadn't been able to stop it before it got out of hand. So it's a very proactive approach, um, on the part of Bavaria Inn and the officer have been, have been very receptive to it and we put them through special training, uh significant special training for the li? Of work here and uh I think they have been off probation and uh on their own for a year before eligible so it's a good program for both, uh both sides.

Mayor: Cool, Thanks Chief, appreciate that. Go ahead Mr. Miller if you would please, name and an introduction of sorts, let us know how things are going there

Miller: I'm George Miller, I won't be singing tonight, (laugh), ha, maybe next year. Umm I'm a manager and part owner of Shotgun Willie's, uh, we had an excellent year this year, uh, we had a lot of help from the City of Glendale and the police department and we work very closely together and hope you will see fit to renew, uh, our liquor license.

Mayor: Fair enough.

Miller: Yah

Mayor: Business good?

Miller: business is very good.

Mayor: Alright

Miller: yah

Mayor: Well, that's a positive. Council what kind of questions do we have for Mr. Miller? Are there any questions for Mr. Miller? Alright business is good, you want to renew the license, there aren't many tavern licenses left in Glendale are there?

Miller (laugh) no

Mayor: once upon a time there were a lot more. Mr. Giacomini before we call for a vote could you comment on, uh, on Mayor Pro Tem Dunafon and Council Member Allen recusing themself

Matt: Yes Mr. Mayor, I think it's appropriate that both those gentleman, uh, made the statement that they did and recused themselves as an ownership interest in the licensee. It's appropriate that they, uh, had action we have performed here, and uh, we have enough council members, umm, left to, to vote so I think that it's appropriate

Mayor: okay fair enough, thank you sir. Council anything else from Mr. Miller or, regarding this issue and if not what looking for is a motion please.

Opper: Motion

Mayor: Go ahead Council member Opper

Opper: Motion to approve renewal tavern liquor license for Bavaria Inn Restaurant dba Shotgun Willie's at 490 S Colorado Blvd

St. James: Second

Mayor: Motion made by Council Member Opper and seconded by Council Member St. James. Is there discussion on the motion? So no let's vote, those in favor please say I

Mayor: Any opposed? Congratulations Sir

(Councilmember Opper moved to renew the Tavern Liquor License for Bavarian Inn Restaurant, Inc. dba Shotgun Willie's at 490 South Colorado Boulevard. Councilmember St. James seconded the motion, which passed unanimously.)

7. Renew Hotel and Restaurant Liquor License for Gunther Toody's LLC dba Gunther Toody's Diner at 4500 East Alameda Avenue. Mayor Harte read the matter into the record by title only, all Councilmembers having received copies of the same. Police Chief Victor Ross reviewed the details of the police report and

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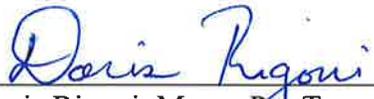
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12. Public Comments. There were no public comments.

13. Council Reports. Councilmember Opper reported that Mr. Tom Flannigan, Chairman of the Arapahoe – Douglas Mental Health Network Board of Directors, complimented Glendale on "doing it right." Mayor

Larry Harte reported that Congresswoman Diana DeGette would meet with City representatives on Monday, February 8, 2010.

14. Other Business. There was no other business.
15. Items for Press Release. There were no items for press release.
16. Adjournment. There being no other business before the Council, Mayor Harte adjourned the meeting at 8:30 p.m.



Doris Rigoni, Mayor Pro Tem

ATTEST:



Veronica Marvin, City Clerk

EXHIBIT Q

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

RONR (11th Edition) p. 361

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CLASSIC WORK *on* **PARLIAMENTARY PROCEDURE**

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OF ORDER
NEWLY REVISED**

11TH EDITION



HENRY M. ROBERT III,
DANIEL H. HONEMANN, and THOMAS J. BALCH
with the assistance of
DANIEL E. SEABOLD and SHMUEL GERBER

**ROBERT'S RULES
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GENERAL HENRY M. ROBERT
U.S. Army

A New and Enlarged Edition by
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Cataloging-in-Publication Data is available from
the Library of Congress

ISBN 978-0-306-82021-2 (hardcover)

978-0-306-82020-5 (paperback)

978-0-306-82022-9 (leatherbound)

Library of Congress Control Number: 2011932260

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Text design by Rachel Hegarty

Set in 9.5-point Galliard by Eclipse Publishing Services

Fifth printing of the 11th edition, April 2012

5 6 7 8 9 10 - 16 15 14 13 12

THE EDITIONS OF THIS MANUAL

First Edition	February 1876	} POCKET MANUAL OF RULES OF ORDER FOR DELIBERATIVE ASSEMBLIES
Second Edition	July 1876	
Third Edition	1893	

(Cover short title:
ROBERT'S RULES
OF ORDER)

Fourth Edition (Completely reworked and 75 percent enlarged by original author)	1915	} ROBERT'S RULES OF ORDER REVISED
Fifth Edition	1943	
Sixth Edition ("Seventy-Fifth Anniversary")	1951	

Seventh Edition (Enlarged more than twofold and totally recast to be made self-explanatory)	1970	} ROBERT'S RULES OF ORDER NEWLY REVISED
Eighth Edition	1981	
Ninth Edition	1990	
Tenth Edition ("Millennium")	2000	
ELEVENTH EDITION (Significantly re-edited with expanded and updated treatment of many topics)	2011	

Inclusive of Robert's Rules of Order and
Robert's Rules of Order Revised More Than
Five and a Half Million Copies in Print

CITE THIS BOOK

with page and line numbers as
in the following example:

RONR (11th ed.), p. 449, ll. 12-14

This Eleventh Edition supersedes all previous editions and is intended automatically to become the parliamentary authority in organizations whose bylaws prescribe "Robert's Rules of Order," "Robert's Rules of Order Revised," "Robert's Rules of Order Newly Revised," or "the current edition of" any of these titles, or the like, without specifying a particular edition. If the bylaws specifically identify one of the ten previous editions of the work as parliamentary authority, the bylaws should be amended to prescribe "the current edition of 'Robert's Rules of Order Newly Revised'" (see p. 588).

§41

§41

Pledge of Allegiance to the flag, a ritual briefly recalling the objects or ideals of the organization, or the like. 1

Roll Call. In some organizations it is customary at meetings to call the roll of officers in order to verify their attendance—or, sometimes in very small societies, even to call the roll of members. If there is a roll call of this nature, it should take place at the end of the opening ceremonies unless a special rule of the organization assigns it a different position in the order of business. The chair announces it by saying, “The Secretary will call the roll of officers [or “will call the roll”].” 5 10

Consent Calendar. Legislatures, city, town, or county councils, or other assemblies which have a heavy work load including a large number of routine or noncontroversial matters may find a *consent calendar* a useful tool for disposing of such items of business. Commonly, when such a matter has been introduced or reported by a committee for consideration in the assembly, its sponsor, or, sometimes, an administrator, may seek to have it placed on the consent calendar. This calendar is called over periodically *at a point established in the agenda by special rule of order, at least preceding standing committee reports.* The matters listed on it are taken up in order, unless objected to, in which case they are restored to the ordinary process by which they are placed in line for consideration on the regular agenda. The special rule of order establishing a consent calendar may provide that, when the matters on the calendar are called up, they may be considered in gross or without debate or amendment. Otherwise, they are considered under the rules just as any other business, in which case the “consent” relates only to permitting the matter to be on the calendar for consideration without conforming to the usual, more onerous, rules for reaching measures in the body. 15 20 25 30

After the completion of new business—that is, when no one claims the floor to make a motion in response to the chair’s query, “Is there any further new business?”—the chair may 35

1 proceed to one or more of the following headings, in an order that may be subject to variation determined by the practice of the organization.

5 *Good of the Order, General Good and Welfare, or Open Forum.* This heading, included by some types of societies in their order of business, refers to the general welfare of the organization, and may vary in character. Under this heading (in contrast to the general parliamentary rule that allows discussion only with reference to a pending motion), members
10 who obtain the floor commonly are permitted to offer informal observations regarding the work of the organization, the public reputation of the society or its membership, or the like. Certain types of announcements may tend to fall here. Although the Good of the Order often involves no business
15 or motions, the practice of some organizations would place motions or resolutions relating to formal disciplinary procedures for offenses outside a meeting (63) at this point. In some organizations, the program (see below) is looked upon as a part of the Good of the Order.

20 *Announcements.* The chair may make, or call upon other officers or members to make, any necessary announcements; or, if the practice of the organization permits it, members can briefly obtain the floor for such a purpose. The placing of general announcements at this point in the order of business
25 does not prevent the chair from making an urgent announcement at any time.

Program. If there is to be a talk, film, or other program of a cultural, educational, or civic nature, it is usually presented before the meeting is adjourned, since it may prompt a desire
30 on the part of the assembly to take action. Although the program is commonly placed at the end of the order of business in such cases, it can, by special rule or practice, be received before the minutes are read; or, by suspending the rules (25), it can be proceeded to at any time during the meeting. If, in
35 courtesy to a guest speaker who is present, the chair wishes

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EXHIBIT Q-1

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

1998 Records of Proceedings

RECORD OF PROCEEDINGS

100 Leaves

FORM 11 C. F. HOECKEL, B. B. & L. CO.

June 2, 1998

Page Three

- b. Special Events Permit for Hellenic Orthodox Community of Denver, June 18-21, 1998.
 - c. Change of Trade Name for Hotel and Restaurant Liquor License for Townhouse Management dba Four Points Hotel Denver Cherry Creek, 600 S. Colorado Blvd.
 - d. Proclamation Declaring June 14, 1998, as Flag day in the City of Glendale.
- Council member Perry seconded the motion, which passed 6-0.

13. Discussion Items.

- a. Passage of HB 1305 - Boundary Adjustments. This item was removed from the agenda.
- b. Master Plan for the Cherry Creek Corridor. Mrs. Skaggs reported that she had received additional information from Denver's Transportation Division regarding a master plan for the Cherry Creek Corridor. The invitation from Denver to join the planning team is participatory, not financial in nature. Council member Perry moved to authorized staff's involvement in the project. Council member Parker seconded the motion, which passed 6-0.
- c. Basketball Courts. This item is carried forward to the June 16, 1998, meeting.
- d. Arapahoe County Branch Office. Mrs. Skaggs reported that she is preparing another proposal to Arapahoe County regarding the use of City space as a County outpost.
- e. Update on Denver Regional Council of Governments and Colorado Municipal League. It was announced that there will be orientation meetings in June, 1998. Also, Council member Reiss reminded the Council of the upcoming CML Conference in Breckenridge.
- 4b. Update on Programs from Cherry Creek School District. It was decided that this item will be carried forward to the June 16, 1998, meeting or to a special meeting at the end of the month.

14. Council Comments.

Being discussed previously in the evening, Council member Smiley moved to approve funding for his attendance at the Waste Expo 98 Conference in Chicago, June 8-11, 1998, in accordance with the City's travel policy. Council member Parker seconded the motion, which passed 5-0. Council member Reiss excused herself from the vote, citing a conflict of interest on the matter.

Council member Smiley moved to adopt Roberts Rules of Order as the procedural guidelines for conducting City Council meetings. Council member Parker seconded the motion, which passed 6-0. Council member Smiley also requested that copies of draft agendas be provided to the Council prior to the actual City Council Packet.

Mayor Rice clarified the voting procedure used at previous CML Annual Business Meetings. He also shared a thank you card from tutoring program coordinator, Lynda Jones and he asked the Council to consider these three items for future discussion: child care study, Child Health Plan and Personal Property Tax Exemptions.

Council member Smiley, referring to a memorandum from Mrs. Skaggs concerning the need to move forward in hiring a City Manager, expressed his thoughts on appointing another interim Acting Manager. Council member Smiley then moved to appoint another Acting City Manager at the June 16th meeting. Council member Parker seconded the motion. There followed a discussion on: the need for such an appointment, the status of the City Manager search and scheduling additional discussion on these matters at an Executive Session. Mayor Rice called for the vote, which failed 5-1. Council member Smiley voting in favor. Council member Reiss then moved to schedule an Executive Session to discuss the City Manager position. Council member Dempsey seconded the motion, which passed 6-0.

Mayor Rice noted that he had attended the Good Citizen Awards at Holly Hills School earlier in the day, and he wished Mrs. Skaggs well with regards to her pending surgery.

RECORD OF PROCEEDINGS

100 Leaves

FORM NO. C.F. RECORDS R.N. A.F.C.A.

MINUTES OF THE CITY COUNCIL
OF THE
CITY OF GLENDALE, COLORADO

June 16, 1998

1. Call to Order and Roll Call. The Regular meeting of the City Council was called to order at 7:04 p.m. by Mayor Joe Rice. Roll call was taken. The following Council members were present: Irma Reiss, Catherine Dempsey, Jay Balano, Kay Parker, Chris Perry and Mark Smiley. Also present were: Ken Burge, Acting City Manager; Jerry Dahl, City Attorney; Theresa Teeters, Deputy City Clerk; other members of the city staff and members of the public.

At the June 2, 1998, meeting of the City Council, the City Council moved to adopt Roberts Rules of Order as the official guideline for meeting conduct. Council member Balano moved to suspend the rules until the July 7, 1998, meeting. Council member Perry seconded the motion, which passed 5-1, with Council member Reiss voting against.

2. Approval of the Agenda. It was suggested that the Executive Session dealing with the City Manager position be heard after Item 5, and that Consent Item b, Manager's Registration for Mac Oil Can's, be heard following the Public Hearing on the liquor license for Mac Oil Can's. Council member Reiss moved to approve the agenda as amended. Mayor Rice expressed his desire to conclude the public business prior to going into Executive Session. Council member Parker seconded the motion, which passed 6-0.

3. Public Comments. Anita Kreutzer shared her concerns about the continuing problems of blowing trash, parking violations and overstocked outdoor areas at Builders Square. The Building Department will investigate the matter.

4. Swearing In of Planning Commissioners. Municipal Judge Ford Wheatley administered the oath of office to the following Planning Commission members: Daniel Breeding, William Peckham, Charles Line, Marc Kamin and Catherine Barnes.

5. Business Profile. Ms. Linda Diekvoss representing the Rocky Mountain Children's Choir, gave a brief overview of her organization. The choir is ability based not age based and is culturally diversified. The choir performs throughout the school year and is headquartered at the Workshops in Glendale.

Council voted to adjourn to go into an Executive Session to discuss the hiring of a City Manager. Mayor Rice expressed his opposition to Executive Sessions. The meeting was adjourned at 7:30 p.m. and reconvened at 8:47 p.m. Council member Reiss then moved to reopen the application process for the City Manager position, with a new application deadline of July 31, 1998. Also, the candidates from the previously screened applicants will be included for consideration. Council member Smiley seconded the motion, which passed 6-0.

Council member Reiss moved to direct a new screening committee to select the top five contenders from the existing applicants by July 15, 1998, and to recommend the top finalists from the new application pool by August 15, 1998. Council member Smiley seconded the motion, which passed 6-0.

Council member Reiss moved to appoint the following individuals to the screening committee: John Crow, Matthew Kryjak and Mike Dunafon, with ex-officio input from financial advisor Russ Caldwell. Council member Smiley seconded the motion, which passed 5-1. Council member Dempsey voting against.

Council member Parker moved to direct staff to prepare thank you letters to the previous committee and to include them in any recognition activity.

MINUTES OF THE CITY COUNCIL
OF THE
CITY OF GLENDALE, COLORADO

July 7, 1998

1. Call to Order and Roll Call. The regular meeting of the City Council was called to order at 7:04 p.m. by Mayor Joe Rice. Roll call was taken. The following Council members were present: Irma Reiss, Catherine Dempsey, Jay Balano, Kay Parker, Chris Perry and Mark Smiley. Also present were: Jo Ann Skaggs, Acting City Manager; Jerry Dahl, City Attorney; Theresa Teeters, Deputy City Clerk; other members of the city staff and members of the public.

At the June 2, 1998, meeting of the City Council, the City Council moved to adopt Roberts Rules of Order as the official guideline for meeting conduct. Council member Balano moved to suspend the rules until the July 21, 1998, meeting. Council member Perry seconded the motion, which passed 6-0.

2. Approval of the Agenda. Council member Reiss moved to approve the agenda. The motion passed 6-0.

3. Public Comments. Jonathan Hart asked the Council about the status of his complaints about Builder's Square which he had outlined in a letter to the Council. There are continuing problems with trash accumulation, parking violations and lack of landscaping. Anita Kreutzer stated that she shared Mr. Hart's concerns. Steve Thomas reported that he is attempting to work with the new ownership to correct these problems.

Timothy Harper inquired about the Bellaire Street Improvement Project and voiced his concerns about the pot holes on private property parking along Bellaire Street. Bob Taylor responded that the project is still in a design phase, and that Public Works will take care of any of the pot holes located on the public streets. Steve Thomas will follow up on notifying the private property owners about their maintenance obligations.

4. Presentations.

a. Presentation of Government Finance Award to June Fleming. Mrs. Skaggs presented June Fleming, the City's accountant, with a Certificate in recognition of her recently awarded Government Finance Officer Certification. Mrs. Fleming had to successfully complete courses in five subjects related to government accounting in order to receive the certificate.

b. Revisit Locations and Uses of Bus Shelters in Glendale. Mr. Gary Young representing Outdoor Promotions, the company the City contracted with to provide bus shelters throughout the City, addressed the Council. Mr. Young asked that the Council approve an amendment to the original contract to allow for a merger of his company with Outdoor Promotions West, and to reconsider the requirement for a specified number of non-advertising shelters. Following a lengthy discussion, it was the unanimous consent of the Council to carry this matter to the July 21, 1998, meeting.

c. Update from Brian Pinkowski Regarding Environmental Issues. Mr. Pinkowski reviewed his status report which had been included in the Council packet. He stated that he is pleased with the progression of policy level dialogue with the Colorado Department of Transportation. Council directed Mr. Pinkowski to proceed with gathering information from CDOT and CDHPE and to pursue cost-recovery of plume related expenditures.

d. Update on National Night Out. Police Officer Matt Bruce, briefed the Council on the preparation for the upcoming event to be held August 4, 1998, at Mir Park. He also asked for the Council's support of the National Night Out and Good Neighboring Month proclamation to be considered later in the meeting. He also noted that the next Citizens Police Academy is scheduled for September, 1998.

e. Recap of Affordable Housing Conference. Planning Commission Chuck Line

RECORD OF PROCEEDINGS

100 Leaves

FORM 10 C. F. HEERY, S. R. & L. CO.

MINUTES OF THE CITY COUNCIL
OF THE
CITY OF GLENDALE, COLORADO

July 21, 1998

1. Call to Order and Roll Call. The regular meeting of the City Council was called to order at 7:06 p.m. by Mayor Joe Rice. Roll call was taken. The following Council members were present: Irma Reiss, Jay Balano, Kay Parker and Mark Smiley. Also present were: Jo Ann Skaggs, Acting City Manager; Jerry Dahl, City Attorney; Theresa Teeters, Deputy City Clerk; other members of the city staff and members of the public. Council members Catherine Dempsey and Chris Perry were excused from the meeting.

At the June 2, 1998, meeting of the City Council, the City Council moved to adopt Roberts Rules of Order as the official guideline for meeting conduct. The Rules had been suspended the previous two meetings. Mayor Rice asked the Council to consider an informal interpretation of Roberts Rules. Council member Balano so moved, Council member Smiley seconded the motion, which passed 4-0.

2. Approval of the Agenda. Council member Reiss moved to approve the agenda. The motion passed 4-0.

3. Public Comments. Jonathan Hart asked the Council about the status of his complaints about Builder's Square. Steve Thomas responded that he had been in contact with the management, and had outlined Mr. Harts's concerns in a letter to them. Mr. Hart also questioned the length of residency and out of state vehicle registration of one of the Council members.

Council member Reiss read a letter from a disc jockey business, asking why they had not been contracted to provide music for the Recreation Department's teen dances. Assistant City Manager Arianne Lahana responded that the teens did not like their music. Staff will contact the disc jockey.

4. Presentations.

Update on Preliminary Landscape Plan for Municipal Complex. Mr. Phil Flores representing THK Architects, gave a presentation on the preliminary design of the landscape plan for the municipal complex. The design was drafted after two public meetings and a presentation to the Planning Commission. He then answered questions from Council. Mr. Bill Junor voiced his concerns about narrowing existing streets and parking requirements. Mr. Flores will investigate placement of informational kiosks throughout the complex. THK will give another presentation of the final design and cost estimates at a future meeting.

5. Consider Assignment of Contract With Outdoor Promotions. President of the company, Gary Young had given a presentation to Council at the last meeting. He came before the Council this evening to ask the Council's approval of an assignment of the contract due to a company merger, and to reconsider the number of non-advertising shelters required per his existing contract with the City. Robin Mayhew of Transportation Management Association, gave her support of bus shelters as a means of encouraging alternative transportation. Council member Smiley moved to approve the merger agreement contingent upon the review of both companies' financial statements by the City Manager. Council member Balano seconded the motion, which passed 4-0. Council member Reiss then moved to lift the advertising restrictions as stated in the current contract, with all other conditions to remain the same. Council member Balano seconded the motion, which passed 3-1, with Council member Smiley voting against.

6. Consider Approval of Final Design of Cherry Street Bridge. This matter was the subject of a study session held on July 9, 1998. Bob Taylor reviewed his memorandum asking for specific direction on completing the bridge design and related street configurations.

EXHIBIT R

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

April 7, 2015 Minutes of the Glendale City Council

RECORD OF PROCEEDINGS

MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL OF GLENDALE, COLORADO

April 7, 2015

Mayor Mike Dunafon led the Pledge of Allegiance.

1. Call to Order and Roll Call. Mayor Mike Dunafon called the regular meeting of the City Council to order. Sherry Frame, City Clerk, called the roll. The following Council Members were present: Mayor Mike Dunafon and Council Members Jeff Allen, Scott Franssen, Joe Giglio, Dario Katardzic, and Doris Rigoni. Mayor Pro Tem Paula Bovo was absent and excused. City Manager Jerry Peters, City Attorney Matt Giacomini, and other members of the City staff also attended the meeting.

2. Approval of Agenda. Council Member Dario Katardzic moved to approve the agenda. This particular motion requires no second. The motion passed unanimously.

3. Public Comments. There were none.

4. Consent Item

- a. Minutes of the February 3, 2015 Regular Meeting
- b. Minutes of the March 10, 2015 Regular Meeting
- c. Minutes of March 17, 2015 Regular Meeting
- d. Renewal of Hotel and Restaurant Liquor License for Silvi's Kitchen at Cityset LLC d/b/a Silvi's Kitchen, 686 South Colorado Blvd.
- e. Renewal of Hotel and Restaurant Liquor License, Jax Fish House City Set LLC d/b/a Jax Fish House, 650 South Colorado Blvd., Bldg. A
- f. Renewal of Liquor Licensed Drug Store License for Dillon Companies Inc., d/b/a King Soopers #124, 4600 Leetsdale Drive
- g. Renewal of Liquor Licensed Drug Store License for Target Corporation d/b/a Super Target T 1806, 4301 East Virginia Avenue
- h. Renewal of Tavern Liquor License for Bavarian Inn Restaurant Incorporated d/b/a Shotgun Willies, 490 South Colorado Blvd.
- i. National Kids to Parks Day Proclamation

Council Member Allen moved to approve the consent items. Council Member Rigoni seconded the motion. The motion then passed unanimously.

5. Transfer of Ownership, Denver Kosher LLC d/b/a Eastside Kosher Deli, 499 South Elm Street. Mayor Dunafon read the matter into the record by title only, all Council Members having received copies of the same.

Chuck Line said East Side Kosher Deli transferred from ESKD, LLC, which was owned and operated by Michael Schreiber, to Denver Kosher, LLC, which is owned and operated by Joshua Horowitz. Mr.

RECORD OF PROCEEDINGS

April 7, 2015 Minutes
Page 2 of 5

Line said all application documents are in order, and a criminal background check showed no criminal activity for Joshua Horowitz.

Dan Carr (#8224) appeared as counsel for the applicant. He said the business has been operational for approximately six weeks, as it had received a temporary liquor license. All previous staff has remained to work for Mr. Horowitz, so everyone serving alcohol has done so for the past ten years.

Joshua Horowitz appeared before Council and said he relocated from New York on Christmas weekend. He has been in training for two months.

Council Member Allen moved to approve the Transfer of Ownership, Denver Kosher LLC d/b/a Eastside Kosher Deli, 499 South Elm Street. Council Member Katardzic seconded the motion. The motion then passed unanimously.

6. Public Hearing on Special Event Permit for Hellenic Orthodox Community of Denver for the Greek Festival on June 19, 20, and 21, 2015, at 4610 East Alameda Avenue. Mayor Dunafon read the matter into the record by title only, all Council Members having received copies of the same. The Mayor opened the public hearing.

Chief William Haskins said the Police Department completed a background investigation on the Special Events Permit application for the 50th anniversary of the Greek Festival on June 19-21, 2015. The President is George McCoy, and the Event Manager is Thomas Peter Nicholas. A criminal check shows no current criminal activity by either party. A check with the State of Colorado Liquor License Enforcement Division shows no record of any violations against the Assumption Greek Orthodox Cathedral. All necessary paperwork is in order and filed with the State of Colorado. Based on the background investigation and the consent of the Mayor and City Council, Chief Haskins recommended approval of the Special Events Permit for the Hellenic Orthodox Community of Denver.

Thomas Nicholas, Event Manager, appeared before Council. He said plans for the 2015 festival include roaming musicians, a "Greek Iron Chef" competition, and a commemorative coin for \$50. The largest change will be the appearance of the cathedral. Mr. Nicholas thanked the Glendale Police Department for their help with the event process.

The Mayor closed the public hearing. Council Member Rigoni moved to approve the Public Hearing on Special Event Permit for Hellenic Orthodox Community of Denver for the Greek Festival on June 19, 20, and 21, 2015, at 4610 East Alameda Avenue. Council Member Franssen seconded the motion. The motion then passed unanimously.

7. Public Hearing on Special Event Permit for Hellenic Orthodox Community of Denver for the HHP Commemorative Dinner on May 30, 2015, at 4610 East Alameda Avenue. Mayor Dunafon read

RECORD OF PROCEEDINGS

April 7, 2015 Minutes
Page 3 of 5

the matter into the record by title only, all Council Members having received copies of the same. The Mayor opened the public hearing.

Chief William Haskins said the Police Department completed a background investigation on the application for a Special Event Permit for the Hellenic Orthodox Community of Denver for the HHP Commemorative Dinner on May 30, 2015. The President is Bill Kallergis, and the Event Manager is Elaine Kusulas. A criminal check showed no current criminal activity for either party. A check with the State of Colorado Liquor Enforcement Division shows no record of any violations against the Assumption Greek Orthodox Cathedral. All necessary paperwork is in order and filed with the State of Colorado. Based on the investigation and the consent of the Mayor and City Council, Chief Haskins recommended approval of the Special Events Permit for the Assumption Greek Orthodox Cathedral.

Elaine Kusulas appeared before Council. She explained that HHP stands for Heritage Preservation Project, one of the ministries of the Cathedral. The intention for the dinner is to honor the founders and volunteers who have helped with the Greek Festival over the past 50 years.

The Mayor closed the public hearing. Council Member Katardzic moved to approve the Public Hearing on Special Event Permit for Hellenic Orthodox Community of Denver for the HHP Commemorative Dinner on May 30, 2015, at 4610 East Alameda Avenue. Council Member Rigoni seconded the motion. The motion then passed unanimously.

8. James Brown, New Manager's Registration, Chatham Cherry Creek HP Leaseco LLC d/b/a Hyatt Place Denver/Cherry Creek, 4150 East Mississippi Avenue. Mayor Dunafon read the matter into the record by title only, all Council Members having received copies of the same.

Chief Haskins said the Police Department completed a background check for a change of manager for Chatham Cherry Creek HP Leaseco LLC d/b/a Hyatt Place Denver/Cherry Creek. The new Operating Manager is James Barry Brown of Evergreen, Colorado, who will replace Sean Keating. A criminal check showed no current criminal activity by James Brown. A check with the State of Colorado Liquor Enforcement Division showed no record of complaint against Hyatt Place Denver/Cherry Creek or James Brown. Based on the background investigation and with the consent of the Mayor and City Council, Chief Haskins recommended approval of the application for change of manager.

James Barry Brown appeared before Council. Mr. Brown said he just relocated from Philadelphia in October. He anticipates no changes at the hotel.

Council Member Allen moved to approve James Brown, New Manager's Registration, Chatham Cherry Creek HP Leaseco LLC d/b/a Hyatt Place Denver/Cherry Creek, 4150 East Mississippi Avenue. Council Member Franssen seconded the motion. The motion then passed unanimously.

RECORD OF PROCEEDINGS

April 7, 2015 Minutes
Page 4 of 5

9. Timothy Wentzlaff, New Manager's Registration, Summit Hotel TRS 094, LLC, d/b/a Staybridge Suites Cherry Creek, 4220 East Virginia Avenue. Mayor Dunafon read the matter into the record by title only, all Council Members having received copies of the same.

Chief Haskins said a background check was completed for a change of manager for Summit Hotel TRS 094, LLC, d/b/a Staybridge Suites Cherry Creek. The new Operating Manager is Timothy Wentzlaff of Ft. Collins, Colorado, who will replace Aaron Williams. A criminal check showed Mr. Wentzlaff pled guilty to Harrassment charges in June 2010. After Mr. Wentzlaff served one year of probation, the case was closed. A check with the State of Colorado Liquor Enforcement Division showed no record of complaint against Staybridge Suites Cherry Creek or Timothy Wentzlaff. Based on the background investigation and with the consent of the Mayor and City Council, Chief Haskins recommended approval of the application for change of manager.

Timothy Wentzlaff appeared before Council. He said he has been in the hotel business for five years. He started as a bartender in Ft. Collins and worked his way up to general manager.

Council Member Allen moved to approve Timothy Wentzlaff, New Manager's Registration, Summit Hotel TRS 094, LLC, d/b/a Staybridge Suites Cherry Creek, 4220 East Virginia Avenue. Council Member Franssen seconded the motion. The motion then passed unanimously.

10. Reappointment of Certain Planning Commissioners. Mayor Dunafon read the matter into the record by title only, all Council Members having received copies of the same.

Chuck Line said the terms of three Planning Commissioners expire in April 2015: Elizabeth Bonney, Storm Gloor, and Tyler Mintz. Mr. Line said Ms. Bonney and Mr. Mintz were present at the meeting; Storm Gloor was unable to attend because of the birth of his new baby.

Council Member Rigoni moved to reappoint to the Elizabeth Bonney, Storm Gloor, and Tyler Mintz to the Planning Commission, each for a three-year term -- to April 2018. Council Member Allen seconded the motion. The motion then passed unanimously.

11. Discussion Items

a. Review of the Next City Council Meeting Agenda. Council reviewed the May 5, 2015 agenda. The City Clerk will add approval of the execution of the Intergovernmental Agreement between the City of Glendale and the Glendale Urban Renewal Authority to the agenda.

12. On-Going Updates:

- a. DRCOG. No report.
- b. CML. Council Member Rigoni mentioned the CML conference in June.

RECORD OF PROCEEDINGS

April 7, 2015 Minutes
Page 5 of 5

- c. Transportation Solutions. Council Member Allen spoke of the successful Road Ahead event and thanked the City Staff and Council Members who attended.
- d. Green Committee. No report.
- e. Infinity Park. Linda Cassaday said the weekend of April 18 is the first non-rugby weekend since the beginning of the spring season. The Event Center has met 76% of its sales goal for the year.
- f. Glendale 180. Mike Gross said he had received many requests for information and contacts since the press event on the project.

13. Department Reports. Josh Bertrand, Public Works Director, said East Mississippi Avenue from Cherry Street to the City border and the CitySet area will be repaved the end of the month. Nicole Limoges said the YMCA had gained 77 new member and 55 drops, for a net of 22. The net for the quarter is 55 new memberships, which is 14 more than the goal. She said at the end of March the YMCA broke their 3,000-members goal and saw a 6% growth from the first quarter of 2014. Ms. Limoges thanked the Police Department for their assistance with the Easter event. Chuck Line said the Planning Commission agenda for April includes a Chick-fil-A site plan. Chick-fil-A plans for this site to be their No. 1 site in the west.

14. Public Comments. There was none.

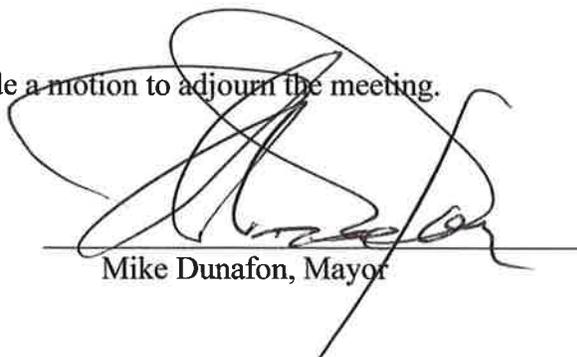
15. Council Comments. Council Members voiced their pride in the recent Glendale 180 press event, especially the job done by Linda Cassaday as event emcee. Council Member Allen thanked Diane Anderson and her team for work on branding. Mayor Dunafon said attendance at the rugby games is up 160%; 90 nations around the world are watching rugby. The Mayor voiced his pride with the City and its staff.

16. Other Business. There was no other business.

17. Items for Press Release. There was none.

18. Adjournment. Council Member Allen made a motion to adjourn the meeting.

Dated: May 27, 2015



Mike Dunafon, Mayor

ATTEST:

Sherry Frame, City Clerk

EXHIBIT S

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

September 1, 2015 Minutes of the Glendale City Council

RECORD OF PROCEEDINGS

MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL OF GLENDALE, COLORADO

September 1, 2015

Mayor Mike Dunafon led the Pledge of Allegiance.

1. Call to Order and Roll Call. Mayor Dunafon called the regular meeting of the Council to order. Sherry Frame, City Clerk, called roll. The following Council Members were present: Mayor Mike Dunafon, Mayor Pro Tem Paula Bovo, and Council Members Jeff Allen, Joe Giglio, Dario Katardzic, and Doris Rigoni. Council Member Scott Franssen was absent. City Manager Jerry Peters, City Attorneys Jeffrey Springer and Matt Giacomini, and members of City Staff also attended the meeting.

2. Approval of Agenda. Mayor Pro Tem Bovo moved to approve the agenda. All Council Members agreed. This particular motion requires no second. The motion passed unanimously.

3. Public Comments. Nasrin Kholghy appeared before Council and read a letter from M.A.K. Investment Group, Inc., requesting that the blight designation be removed from the parcels of land they own in Glendale and requested a written response from the City by September 15, 2015.

4. Consent Items

- a. Minutes of the August 4, 2015 Regular Meeting
- b. Minutes of the August 25, 2015 Special Meeting
- c. Renewal of Hotel and Restaurant Liquor License Renewal for Brinker Restaurant Corporation d/b/a Chili's Grill and Bar at 790 South Colorado Boulevard
- d. Renewal of Tavern Liquor License for TEM and Company d/b/a T-Bar, 490 South Colorado Blvd. #101

City Attorney Springer asked to have the title of the August 25, 2015 meeting minutes changed to a "regular" meeting minutes rather than "special" meeting minutes. He said the meeting held on the fourth Tuesday of the month rather than the second Tuesday was still a "regular" meeting.

Council Member Rigoni moved to approve the consent items, with the change of the title of the August 25, 2015 meeting minutes to "Regular Meeting." Mayor Pro Tem Bovo seconded the motion. The motion then passed unanimously.

5. Public Hearing on New Hotel and Restaurant Liquor License, Carve BBQ Glendale, LLC d/b/a Carve BBQ, 1000 South Colorado Blvd., Suite 103, Glendale. Mayor Dunafon read the matter into the record by title only, all Council Members having received copies of the same. The Mayor opened the public hearing.

RECORD OF PROCEEDINGS

September 1, 2015 Minutes

Page 2 of 3

Chief Haskins said the Police Department completed a background check on the application for a Hotel and Restaurant Liquor License for Carve BBQ Glendale d/b/a Carve BBQ. Carve BBQ Glendale is owned and operated by Bourbon Brothers, LLC and Carve Restaurant Group, LLC. The Operating Manager will be Shawn Owen-Jones. The criminal check run showed no criminal activity for Shawn Owen-Jones or any of the individual owners of Carve BBQ. A check with the State of Colorado Liquor Enforcement Section showed no record of complaints against Shawn Owen-Jones or any of the individual owners of Carve BBQ. Chief Haskins said a Premise Inspection will be completed on or before the business' opening day. Based on the investigation and with the consent of the Mayor and City Council, Chief Haskins recommended approval of the New Hotel and Restaurant Liquor License for Carve BBQ Glendale.

Robert Dill from Dill Dill Carr Stonbraker & Hutchings, Attorney No. 5725, appeared on behalf of Carve BBQ. Mr. Owen-Jones also appeared and was sworn as a witness. He is employed as the Chief Operating Officer of Southern Concepts Restaurant Group. Southern Concepts Restaurant Group is the parent of Southern Hospitality Group and Carve BBQ. Southern Concepts has operated restaurants in Colorado for three years. They currently have three locations; Carve BBQ Glendale will be the fourth. The other three restaurants are operated on 17th Street in LoDo, in Colorado Springs, and in Lone Tree. He said all three restaurants hold liquor licenses and have not been charged with any liquor violations. The Glendale location will a 2,500 square foot fast-casual restaurant, with 58 seats and approximately 25 employees. The restaurant will only serve tap beer, and the beer will only be served by a manager. This limits the service of alcohol to approximately three people. The managers will be ServSafe certified. The restaurant hours will be 11 a.m. to 10 p.m. There will be a patio with approximately 30 seats. The General Manager will be Jeff Gebott.

Eva Garretson of Liquor Licensing Professionals of Manitou Springs, Colorado, appeared before Council and was sworn as a witness. She said the company performed a Needs and Desires Survey on August 13 and 16, 2015, and she described how the survey process was performed. Ms. Garretson said there were 44 signatures from businesses and 98 from residents, for 100% approval.

The Mayor closed the public hearing. Mayor Pro Tem Bovo moved to approve the New Hotel and Restaurant Liquor License for Carve BBQ Glendale, LLC, d/b/a Carve BBQ, 1000 South Colorado Blvd., Suite 103. Council Member Katardzic seconded the motion, and the motion passed unanimously.

6. Discussion Item. Council reviewed the agenda for the October 6, 2015 Council meeting.

7. On-Going Updates

a. Infinity Park. Linda Cassaday, Deputy City Manager and Finance Director, said the first game of the Women's Premiere Rugby League is September 12. There will be four games this season. She said the Event Center is at 113% of the year's goal.

RECORD OF PROCEEDINGS

September 1, 2015 Minutes
Page 3 of 3

b. Technology & Communication. Council Member Katardzic said online bill pay is now activated on the City’s website.

8. Department Reports. Nicole Limoges of the YMCA said their goal for August was 80 new members, and they actually brought in 96. Unfortunately, there were more than 16 members who dropped their membership during the month, so there was a net loss of members, which is typical of the summer months. The facility will be having an open house on September 9. In September, a new guest policy was implemented, where members over 18 can bring a guest twice during the calendar year for free. If the guests do not enroll for their own membership after the second membership, they would then pay a \$10 fee. Chuck Line, Deputy City Manager, said the Planning Commission looked at the Bull and Bush’s addition of a grain silo on their property, which the Commission concluded was a minor amendment that did not get to be heard by Council. He described certain landscaping additions. Ms. Cassaday said the City is 10.75% over budget in sales and use taxes and 10.6% over budget in lodging taxes through the end of July. Chief Haskins spoke of the Police Department’s new uniforms.

9. Public Comments. Nasrin Kholghy spoke of their property purchase.

10. Council Reports. Council Member Giglio asked Mr. Line how many constructions projects are currently underway in Glendale. Mr. Line said there are five projects: the Noodles restaurants near the Rite-Aid, Vitamin Cottage, Smoking Gun, the Mercedes/BMW dealerships, and the apartment complex on Cherry Street. The apartments should be finished in mid-fall and will have 341 units. He said some of the apartments are now occupied. Mr. Giglio complimented the Police Department and how the tone and perception of the Department has changed over time.

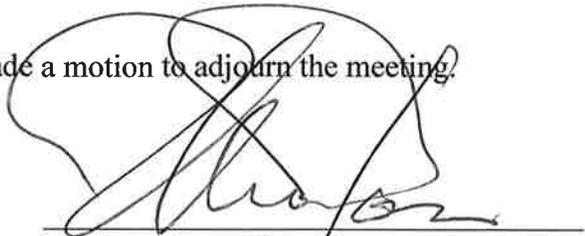
The Executive Session on the agenda was cancelled.

11. Other Business. There was no other business.

12. Items for Press Release. There were none.

13. Adjournment. Council Member Rigoni made a motion to adjourn the meeting.

Dated: 9/15/15



Mike Dunafon, Mayor

ATTEST:


Sherry Frame, City Clerk

EXHIBIT T

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

March 1, 2016 Minutes of the Glendale City Council

RECORD OF PROCEEDINGS

MINUTES OF THE REGULAR MEETING OF THE CITY COUNCIL OF GLENDALE, COLORADO

March 1, 2016

Mayor Mike Dunafon led the Pledge of Allegiance.

1. Call to Order and Roll Call. Mayor Dunafon called the regular meeting of the Council to order. Sherry Frame, City Clerk, called roll. The following Council Members were present: Mayor Mike Dunafon and Council Members Jeff Allen, Joe Giglio, Dario Katardzic, Lindsey Mintz, and Doris Rigoni. City Manager Jerry Peters, City Attorney Matt Giacomini, and members of City Staff also attended the meeting.

2. Approval of Agenda. Council Member Katardzic moved to approve the agenda. This particular motion requires no second. The motion passed unanimously.

3. Public Comments. David Temchulla of 400 South Elm Street spoke to Council. He has been a resident of the Denver area since 1979 and lives in the Hilltop area. He has had a long-standing business in the area. Mr. Temchulla said he has been excited to hear about the redevelopment plan for Glendale but is concerned to hear about the proposal for a highrise on the corner of South Colorado Blvd. and Virginia Avenue. He said the congestion on Colorado Blvd. is already impossible to navigate, and the addition of a highrise would cause even more traffic and would be an eyesore. He is hopeful that the Council will keep to its original plan of development.

Jeanne Price appeared before Council and said she has spent a considerable amount of time on CORA requests and feels she has not gotten the information she has requested. She said that she has concerns about the Glendale Cherry Creek Chronicle and the Chamber of Commerce.

4. Interview Applicants for City Council Position. Council interviewed Rickalan Kerr and Scott Norquist for a position on the Council. Thereafter, the City Clerk passed out ballots to the Council for their vote. City Attorney Giacomini said that normally Mayor Dunafon only votes in the situation of a tie, but he may vote on filling a Council position. The City Clerk announced the vote was unanimous for Scott Norquist, and Mr. Norquist swore an oath, administered by the Mayor. Council Member Norquist then took his place on the dais.

5. Consent Items

- a. Minutes of the January 5, 2016 Regular Meeting
- b. Minutes of the February 2, 2016 Regular Meeting
- c. Minutes of the February 16, 2016 Regular Meeting
- d. Renewal of Tavern Liquor License for Bavarian Inn Restaurant Incorporated d/b/a Shotgun Willies, 490 South Colorado Blvd.
- e. Renewal of Hotel and Restaurant Liquor License for Silvi's Kitchen at Cityset LLC d/b/a Silvi's Kitchen, 686 South Colorado Blvd.

RECORD OF PROCEEDINGS

March 1, 2016 Minutes

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- f. Renewal of Hotel and Restaurant Liquor License, Jax Fish House City Set LLC d/b/a Jax Fish House, 650 South Colorado Blvd., Bldg. A
- g. Proclamation for Kids to Park Day, National Parks Trust, May 21, 2016

Council Member Katardzic moved to approve the consent items. Council Member Allen seconded the motion. The motion then passed unanimously.

6. New Manager Registration, Amy Everhart, Silvi's Kitchen at City Set, LLC, d/b/a Silvi's Kitchen, 686 South Colorado Blvd. Mayor Dunafon read the matter into the record by title only, all Council Members having received copies of the same.

Chief Haskins said the Police Department completed a background check on the application for a Change of Manager for Silvi's Kitchen at City Set, LLC, d/b/a Silvi's Kitchen, 686 South Colorado Blvd. The new Operating Manager is Amy Everhart of Northglenn, Colorado, who will replace Amanda Cooper. The criminal check run showed no criminal activity for Amy Everhart. A check with the State of Colorado Liquor Enforcement Section showed no record of complaints against Amy Everhart or Silvi's Kitchen. Based on the investigation and with the consent of the Mayor and City Council, Chief Haskins recommended approval of Amy Everhart as New Manager of Silvi's Kitchen.

Amy Everhart appeared before Council and said she has been in restaurant management for 15 years. She has been working for Silvi's approximately six months. When asked if she has noticed any increased business from the new apartment complex in the neighborhood, she said she assumes business must be coming from the apartment complexes as sales totals have increased over the last two years.

Council Member Allen moved to approve the New Manager Registration, Amy Everhart, Silvi's Kitchen at City Set, LLC, d/b/a Silvi's Kitchen, 686 South Colorado Blvd. Katardzic seconded the motion. The motion then passed unanimously.

7. Public Hearing on the Site Plan Amendment for Hellenic Orthodox Church at 4610 East Alameda Avenue, and Public Hearing on the Concurrent Preliminary and Final Site Development Plan and Special Use Permit for J Tennis Center in the 4600 Block of the North Side of Leetsdale Drive. Mayor Dunafon read the matter into the record by title only, all Council Members having received copies of the same.

The Mayor opened the public hearing. He said that the two public hearings will be held and voted on at the same time.

RECORD OF PROCEEDINGS

March 1, 2016 Minutes
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Chuck Line, Deputy City Manager, said the site plan amendment for the Greek Orthodox Church involves removing the bottom part of the hill from the previously-approved site plan area. After that removal, the church will still have 27% open space – far above the City’s requirement. The amendment was passed unanimously by the Planning Commission, with the recommendations made in the Staff Comments and the further review of two items before the Council meeting: 1) photometrics of the site by the Police Department and 2) further traffic study on the ingress/egress point located on Leetsdale Drive.

Mr. Line said the detention facility was originally designed to be located on the corner in the site plan. It was moved, because it had to be significantly deeper as some visual issues and grade issues were created. The site plan complies with open space requirements at 22.75%. Mr. Line said the number of parking spaces meets the City’s requirements and should be double what the facility will need. The top of the building is a 42’ ridgeline if the lowest grade is used in the calculation. On the issue of ingress/egress into the site, he said there should be no effect except for peak times when stacking will go past that point. He said the concern is not so much for the people entering and traveling on Leetsdale as it is for people entering the Cherry Street entrance. Even though Staff does not anticipate problems with the right-in, right-out, Staff feels that a condition of approval should be an additional ingress/egress allowing the City to require additional signage, i.e., “No Cherry Street traffic during [certain hours of the day]” or “No Cherry Street access.” Council Member Norquist asked if there would be a “no left turn” sign at the exit. Mr. Line said there would be a sign. He said the project will begin this summer.

Josh Bertrand, Director of Public Works, said the site plan includes improvements along South Dahlia Street that currently do not exist, specifically a sidewalk, an urban gutter, and streetlights. He noted the Greek Church volunteered to put in these improvements. Captain Mike Gross said the photometrics provided will be consistent with what the Police Department would have asked for in environmental design, i.e., LED lights.

Chris Bremner, a representative from the Jewish Community Center appeared before Council. He said the Center currently has four tennis courts and is antiquated. A major remodel of the entire Center is being planned, and the tennis club will be the first step in the process. The entire project will cost approximately \$50 million and will include the building of a new fitness center, an early childhood education center, administrative offices, and a membership-based tennis club, as well as improvements to the parking lot. He said the Jewish Community Center worked with the Greek Church on the height of the building, so as not to obstruct the Church’s view of the City, but it is important to the Jewish Center to have a right-in turn off Leetsdale Drive. Mr. Bremner said there will be a mezzanine level on the north side where people can look down on the courts. Mr. Line confirmed for Council Member Mintz that no variances are being requested.

RECORD OF PROCEEDINGS

March 1, 2016 Minutes

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John Johns, Real Estate Chairman of the Greek Assumption Cathedral, addressed Council and said that the collaboration with the Jewish Community Center, another non-profit association, works perfectly for them. He said the improvements have been needed for years.

The Mayor closed the public hearing.

Council Member Rigoni moved to approve the Site Plan Amendment for Hellenic Orthodox Church at 4610 East Alameda Avenue and approve the Concurrent Preliminary and Final Site Development Plan and Special Use Permit for J Tennis Center in the 4600 Block of the North Side of Leetsdale Drive. Council Member Mintz seconded the motion. The motion then passed unanimously.

8. Presentation and Consider Conversion to LED Street Lights. Josh Bertrand said that he, Jerry Peters, and Chuck Line met with Hollie Velasquez Horvath and Susan Davis from Xcel Energy. He said Xcel gave the City a few options for converting to LED street lights. The LED conversion program is part of the tariff agreement that Ken Feldman and 19 municipalities negotiated with Public Utilities Commission.

Mr. Bertrand said the LED light is a better quality light. The color rendering index helps to see and identify objects. The color rendering of high pressure sodium is 20; the color rendering index of LED lights is 70. He explained the makeup and history of high pressure sodium lights. Mr. Bertrand said there is energy savings with LED lights and calculated the City's savings on its 370+ street lights to be 50 tons of coal. He showed some photos to Council of the differences in what could and could not be seen when an area is lit with the two types of lights. LED lights should not sign in residents' windows but rather should shine down on the streets. Mr. Bertrand said the LED street lights have warranties of 10-15 years.

Mr. Bertrand said Xcel gave the City two options: *Option A.* Xcel would pay 100% of the cost. The \$304.00 per light conversion rate would be billed into Xcel's energy rate. Xcel says there would be between a 5% and a 7% total cost savings. Because of the number of 50-watt LED street lights, Mr. Bertrand believes the savings would be more like 4%. He believes the job could be completed within a three-month period. *Option B.* The City would pay for the fixtures and lamps in the approximate amount of \$112,805 but would realize more energy costs, of approximately 17% of \$12,903. It would take about 12 years to recoup the costs of the initial layout. *Option C.* Do nothing and continue to use the high pressure sodium lights.

Mr. Bertrand said it is Staff's suggestion to choose *Option A*, which gives the City better quality lights, new technology, a small savings, and none of the risks, i.e., a bad batch of lights from the manufacturer. Linda Cassaday, Deputy City Manager and Finance Director, agreed with *Option A*. When asked if changing to LED street lights would change the City's insurance rates, Captain Gross

RECORD OF PROCEEDINGS

March 1, 2016 Minutes
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said he would ask CIRSA the question. Mr. Line said the number of street lights out in the City at the same time would decrease significantly.

Council Member Norquist moved to approve Staff's *Option A*, thereby converting the City's 371 street lights to LED lights. Council Member Allen seconded the motion. The motion then passed unanimously.

9. Discussion Item. Council reviewed the agendas for the April 11 and April 19, 2016 Council meetings.

10. On-Going Updates

- a. DRCOG. No report.
- b. CML. No report.
- c. Transportation Solutions. No update.
- d. RTD. No update.
- e. Green Committee. No update.
- f. Infinity Park. Ms. Cassaday said the home opener rugby game is March 12. She mentioned the Glendale Raptors Rugby Academy, which is the umbrella program for all the youth programs, i.e., in-school and after-school programs and coaching programs that Mark Bullock and Andre Snyman are doing around the country. The January and February in-school programs have reached 940 kids, and March and April programs are scheduled, as well as two six-week after-school programs at Cory and University Park Elementaries. Invitations were sent out in early February for the Serevi Rugbytown 7s; nearly all teams were committed within a week. Typically, 17 teams participate in the tournament; 20 have signed up this year.
- g. Glendale 180. No report.
- h. Technology and Communication Committee. No report.

11. Department Reports. Chuck Line said the intersection near the Rite Aid and Noodles and Company will be widened to add one lane going northbound into the three-way intersection. Lane assignments are still being studied. Improvements are also underway at Virginia Avenue and Colorado Blvd. Nicole Limoges, YMCA Executive Director, said the membership goal for January was met, and they are under in their drops – for a positive membership net. A personal training sale in January and February, which normally nets \$5,000, brought in \$6,800 this year. The first-time Trivia Night was successful, raising \$6,000 between ticket and silent auction sales. The Easter celebration will be held on March 26. Captain Gross said Sports Authority is asking for Run, Hide, Fight, Treat training for 900 employees. Linda Cassaday said the City's annual audit will begin on April 4. Chief Haskins said the Police Department will go to the Solana on March 12 and help with their health fair. The next Ready Glendale will be held on March 24; the topic is weather spotting.

RECORD OF PROCEEDINGS

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12. Public Comments. Nassrin Kholghy said that over time the Glendale Cherry Creek Chronicle quoted the size of their land as being a different figure in various articles. In August 2006, it said 7 acres; in June 2015, it said 5 acres; in July 2015, it said 3 to 5 acres; in November 2015, it said 6 ½ acres; in February 2016, it said 5 acres; and in June 2016, it said 3.8 acres. She also said that originally the Glendale 180 covered 22 acres, from Colorado Blvd. to Cherry Street. The City's site says 42 acres. Ms. Kholghy commented on the February 2016 meeting between the City, the Kholghys, and Dana Crawford. [Mayor Dunafon asked that the record reflect Ms. Kholghy had gone over the three-minute per-person time limit for public comment. He asked her to continue.] The Mayor said the Council is always happy to extend the Kholghys extra time for public comments any time. He said the Kholghys are plaintiffs in a federal lawsuit against the City, which causes difficulty to responding to any of their comments or questions.

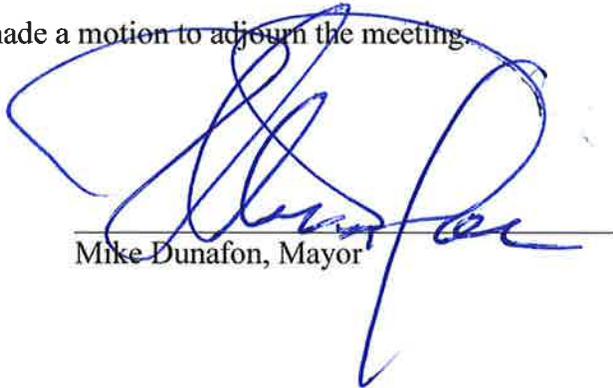
13. Council Reports. Council Members thanked Rickalan Kerr for his interest in serving on the Council. Council Member Norquist will now be the Council representative to RTD. Council Member Mintz said that, as a business owner in Glendale, she is very grateful to Ms. Cassaday for the business coming into the City from the rugby and event center events. Mayor Dunafon said the response from the citizens during this year's election cycle was encouraging.

14. Other Business. There was none.

15. Items for Press Release. There were none.

16. Adjournment. Council Member Allen made a motion to adjourn the meeting.

Dated: 4/19/16



Mike Dunafon, Mayor

ATTEST:



Sherry Frame, City Clerk

EXHIBIT U

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

January 30, 2017 Letter from R. Kemp to K. Dumler

January 30, 2017

Via email to:

Kyle Dumler
Senior Attorney General
Attorneys for the Independent Ethics Commission
1300 Broadway, 8th Floor
Denver, CO 80203
kyle.dumler@coag.gov

Independent Ethics Commission
1300 Broadway
Suite 240
Denver, CO 80203
iecinfo@state.co.us

Re: Statement of Clarification to Complaint 16-02

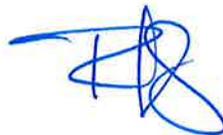
Mr. Dumler and Commission Members:

On February 2, 2016, we filed Complaint 16-02, regarding ethical violations by Mike Dunafon, Mayor of Glendale, Colorado (the "Complaint"), which is now pending before the Commission.

In the Complaint, we quote and reference the law under C.R.S. Sections 24-18-109 and 24-18-110, which govern the rules of conduct for local government officials and employees and voluntary disclosure. We want to clarify that any citation in the Complaint to C.R.S. Sections 24-10-109 or 24-10-110 was inadvertent and should read C.R.S. Sections 24-18-109 and 24-18-110, respectively. We apologize for any confusion this error may have caused.

Please do not hesitate to call with any questions.

Sincerely,



Russell W. Kemp

EXHIBIT V

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

Advisory Opinion 16-05



William Leone, *Chair*
Bob Bacon, *Vice-Chair*
April Jones, *Commissioner*
Matt Smith, *Commissioner*

Independent Ethics Commission
1300 Broadway, Suite 240
Denver CO 80203
Phone: 720-625-5697
www.colorado.gov/iec

Dino Ioannides, *Executive Director*

Advisory Opinion 16-05 (Conflict of Interest)

Summary: A local government official should avoid real and perceived conflicts of interest when voting on or debating questions that affect the personal, private, or financial interests of the official.

I. Background

Board of Trustees member Rachel New (“New”), of the Town of Pitkin, Colorado, filed a request for an advisory opinion requesting guidance about a possible conflict of interest between New’s personal business and her role as a member of the Town’s Board of Trustees (the “Board”).

New indicates that she is a newly elected member of the Board as a result of elections held in April, 2016. Prior to her election, in the spring of 2014, New established a property management business, which she owns. Among other services, her business provides house winterizing, de-winterizing, cleaning, lawn maintenance, window washing, laundry services, errand services, pest control, and general maintenance. Included in the business portfolio is the management of short-term rental properties. New assists in the short-term leasing of these properties by taking reservations, receiving rental payments, and remitting taxes on behalf of the homeowner. Twenty percent of the business income is generated by managing the two short-term rentals.

The Town of Pitkin is a statutory town. Recent issues being addressed by the Board include updating the zoning code to regulate short term rentals. In this regard, New may be faced with policy debate and/or voting on short term rental issues in the context of her duties as a member of the Board. Specifically, Sections 3, 7, and 8 of the Amended Town of Pitkin Zoning Code of 2012 provide:

Section 3. Definitions. For the purpose of this code, certain words and phrases used herein shall be defined as follows:

* * *

37. Short-term Transient Rental (Lodging): Rental of a residential structure or part thereof, for any twenty-nine (29) day period or less, is considered a

commercial/business use.

* * *

Section 7. Principal Permitted Uses. This section enumerates the principal uses which are permitted in each zoning district:

A. Resident, Low Density Residential:

1. Dwellings, single family
2. Community centers and public buildings
3. Parks and playgrounds
4. Accessory uses as listed in Section 10 of this Code
5. Long-term permanent rental: Rental of a residential use of structure, or part thereof, where the occupants are primarily permanent in nature for any thirty (30) day period or more. (Nontransient)

B. Business, Business:

1. Any use permitted in the Resident district
2. Accessory buildings and uses
3. Amusement or recreation
4. Automobile gas stations or garages
5. Automobile parking lots
6. Club or lodge
7. Dining or drinking places
8. Hotel or motel
9. Laundromat
10. Office or clinic
11. Retail store or shop
12. Schools and churches, including seasonal church schools.

Section 8. Conditional Uses. The following uses shall be permitted only after written request to the Board of Trustees, and acceptance of written approval made by the Board of Trustees:

* * *

D. Short Term Rental (Lodging) in the Business District: After review of the Zoning Board of Adjustment, a recommendation for conditional use appropriate to the available water, sewage, and off-street parking will be referred to the Board of Trustees for final decision. [Emphasis added.]

The Town Clerk confirms that the Town of Pitkin does not currently have any conflicts of interest or other ethical policies in place.

II. Jurisdiction

Ms. New is a member of a statutory town's Board of Trustees and is therefore a "local

government official” under Colo. Const. Article XXIX, sec. 2(3), and C.R.S. § 24-18-102(6).

The Independent Ethics Commission has authority to issue advisory opinions on ethics issues arising under Article XXIX or any other standards of conduct or reporting requirements as provided by law. *See* Colo. Const. Article XXIX, sec. 5(5).

III. Applicable Law

Conflicts of interest are addressed in C.R.S. § 24-18-109 as follows:

(2) A local government official or local government employee shall not:

* * *

(b) Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent[.]

* * *

(3) (a) A member of the governing body of a local government who has a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.

IV. Discussion

A. Conflicts of Interest.

The conflicts of interest statute cited herein restricts a local government official such as New from: (1) performing an official act directly and substantially affecting to its economic benefit a business in which the local government official has a substantial financial interest; and (2) voting on or attempting to influence the decisions of other members of the governing body in voting on a matter in which the local government official has a personal or private interest.

The Commission finds that New’s ownership interest in a property management business that manages short-term rentals in the Town of Pitkin is substantial. As such, New must refrain from performing any official act that directly and substantially benefits the business economically. For example, because the Town’s zoning code requires the Board to give final approval for conditional short-term rental uses, New should refrain from voting to grant or withhold such approval when doing so would economically benefit her business. Moreover, New must not vote or attempt to influence the decisions of other members of the Board when she has a personal or private interest in the outcome.

B. Appearance of Impropriety.

In addition to the statutory provisions cited above, Colo. Const. Article XXIX, sec. 1(c), requires covered individuals “to avoid conduct that is in violation of their public trust or that creates a justifiable impression among members of the public that such trust is being violated.”

Appearances of impropriety are generally referred to as “perception issues” or “violating the smell test.” They can weaken public confidence in government and create a perception of dishonesty, even among government officials who are in technical compliance with the law.

In order to avoid the appearance of impropriety, local government officials should avoid voting on or debating questions in a manner that may lead the public to perceive that the local government official is either placing his or her own private business interests in a position of competitive advantage or keeping his or her own private business interests from being adversely affected by the decisions of the governing body.

The Commission also recommends that when feasible, counties and municipalities should consider enacting an ethics code to provide further guidance to elected officials with similar potential conflicts.

V. Conclusion

A member of a town’s board of trustees should follow Colorado statutes pertaining to conflicts of interest and constitutional requirements pertaining to the appearance of impropriety.

The Commission cautions public official and employees that this opinion is based on the specific facts presented herein, and that different facts could produce a different result. The Commission therefore encourages individuals with particular questions to request more fact specific advice through requests for advisory opinions and letter rulings related to their individual circumstances.

The Independent Ethics Commission

William J. Leone, *Chair*

Bob Bacon, *Vice-Chair*

April Jones, *Commissioner*

Matt Smith, *Commissioner*

Dated: June 30, 2016

EXHIBIT W

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

Findings and Conclusions, Compl. 17-31

COLORADO INDEPENDENT ETHICS COMMISSION

Complaint No. 17-31

FINDINGS OF FACT AND CONCLUSIONS OF LAW

IN THE MATTER OF: STEVE RICOTTA

This matter comes before the Independent Ethics Commission (“Commission”) on a complaint filed by Stephen Harrison, Eva Mares, Ronald Mares, Steven Gardner, and Shane Espinoza (“Complainants”)¹ against Steve Ricotta, a trustee for the town of Williamsburg, Colorado. Complainants alleged various ethical violations surrounding Mr. Ricotta’s votes as a town trustee. In its Notice of Issues for Hearing, the Commission narrowed the issues for hearing to alleged conflicts of interest under sections 24-18-109(2)(b) and (3)(a), C.R.S., which the Commission has jurisdiction over pursuant to section 5(1) of Article XXIX of the Colorado Constitution.

On March 18, 2019, the Commission held an evidentiary hearing and deliberated on the merits of the case in public. For the reasons set forth below, the Commission has determined that Mr. Ricotta violated section 24-18-109(2)(b), C.R.S., when he voted in favor of vacating an alleyway that benefitted an organization for which he was an agent or representative, the Brotherhood of the 74. The Commission determined that Mr. Ricotta violated section 24-18-109(3)(a), C.R.S., when he voted in favor of retaining his wife, Lucinda Ricotta, as town clerk. The Commission has determined that Mr. Ricotta did not violate section 24-18-109(3)(a), C.R.S., when he voted in favor of bonuses for town employees, including his wife, because those bonuses had already been approved prior to his tenure. The Commission finds that no penalty should be imposed pursuant to section 6 of Article XXIX of the Colorado Constitution.

I. Findings of Fact

1. Mr. Ricotta was elected as a town trustee for the town of Williamsburg, Colorado on November 8, 2016, and was sworn into office on December 5, 2016.

¹ Mr. Espinoza later withdrew from participating in the complaint process.

2. Mr. Ricotta was also, at all times relevant to the complaint, President of the Royal Gorge Chapter of the Brotherhood of the 74, a motorcycle-riding organization.

3. Mr. Ricotta was, at all times relevant to the complaint, married to Lucinda Ricotta, who was employed by the town of Williamsburg as town clerk.

4. On April 25, 2016, property owners Donna and Jack Duncan filed a written request with the town of Williamsburg to vacate a public alleyway located in block 4 of “Colorado Fuel and Iron Co.’s” addition to Williamsburg.

5. The Duncans’ request was based on their desire to develop the parcel and comply with mandatory set-backs.

6. That alleyway bisected the Duncans’ properties, Lots 3-7 and 11-16 in Block 4.

7. The alleyway also bisected the Brotherhood of the 74’s properties, Lots 4-10 and 11-20 in Block 5.

8. Mrs. Ricotta testified at hearing that the Duncans’ request was not granted because the mayor at the time believed it was a public right-of-way that could not be vacated.

9. On July 25, 2016, Mrs. Ricotta signed and filed an application for a Zoning and Building Permit on behalf of the Brotherhood of the 74 to construct a “[g]arage” on the Brotherhood of the 74’s properties. The application does not specify the lot, block, or subdivision number.

10. Over the next couple of months, the Brotherhood of the 74 built a structure on their property for use as a clubhouse or meeting place. Mr. Ricotta paid for one-half of the building costs.

11. Mr. Ricotta’s undisputed testimony at hearing was that the property owned by the Brotherhood of the 74 belongs to the national chapter of that organization, which has about 175 members. Mr. Ricotta is a member of that organization.

12. On November 14, 2016, Mr. Ricotta filed a request with Mrs. Ricotta, in her capacity as town clerk, for vacation of the lot lines of Lots 4-10 and 11-20 in Block 5, in order to create one parcel of the Brotherhood of the 74’s properties.

13. On November 15, 2016, Mrs. Ricotta recorded a document with the Fremont County Clerk and Recorder, representing that the town of Williamsburg “has approved the vacation of alleyway of block 4 and 5 of Colorado Fuel and Iron CO’s addition to Williamsburg. For further use and development of property owners located within those blocks [sic].”

14. Mrs. Ricotta included in the document a typewritten signature that the document had been signed by “Jerry Farringer, Mayor”.

15. Mr. Farringer had not yet been sworn in as the mayor of Williamsburg and had not given Mrs. Ricotta approval to sign the document on his behalf. The town of Williamsburg had not approved vacation of the alleyway.

16. On November 22, 2016, the Duncans again filed a written request for vacation of the alleyway on Block 4.

17. At the December 5, 2016 meeting of the town of Williamsburg, the new town trustees, including Mr. Ricotta, and Jerry Farringer, the new mayor, were sworn into office.

18. At the December 5, 2016 meeting, the town trustees—including Mr. Ricotta—voted to approve vacation of the alleyway, which included vacating the alleyway’s extension through the properties of the Brotherhood of the 74.

19. The minutes of the December 5, 2016 meeting read, “A [w]ritten submission by Donna Duncan to vacate alleyway of block 4 on Pikeview and The Brotherhood of the 74 request the same for block 5. A motion was made by Billy Jack to vacate the 10 foot alleyway easement between east and west lots. Seconded by Forrest. Roll Call: 7 yes, 0 no, 0 abstain and 0 absent. Motion carried.”

20. At the November 7, 2016 town of Williamsburg meeting, prior to Mr. Ricotta’s tenure, the town trustees had voted to give town employees a \$400.00 bonus.

21. At the December 5, 2016 meeting, the town trustees—including Mr. Ricotta—again voted to give town employees a \$400.00 bonus. The reason for the duplicate votes is not apparent from the record.

22. Mrs. Ricotta testified at hearing that the \$400.00 bonus approved at the November 7, 2016 meeting and the \$400.00 bonus approved at the December 5, 2016 meeting were one and the same.

23. Mrs. Ricotta testified that she received the \$400.00 bonus sometime before December 24, 2016.

24. Also at the December 5, 2016 meeting, the town trustees—including Mr. Ricotta—voted to retain the town employees.

25. On December 6, 2016, Mrs. Ricotta recorded a document with the Fremont County Clerk and Recorder, representing that the town of Williamsburg had approved vacation of the alleyway of blocks 4 and 5.

26. On February 22, 2017, the Williamsburg town attorney advised Mrs. Ricotta that, in order to vacate an alleyway, the town must pass an ordinance pursuant to section 43-2-303(1)(a), C.R.S.

27. At the March 6, 2017 meeting of the town of Williamsburg, the town trustees did a “first read” of an ordinance to vacate the alleyway on Blocks 4 and 5.

28. At the April 3, 2017 meeting of the town of Williamsburg, the town trustees voted to pass an ordinance vacating the alleyway on Blocks 4 and 5.

29. The minutes of the April 3, 2017 meeting reflect that the vote was 4-2, and Mr. Ricotta abstained.

30. Mr. Farringer testified at hearing that the town’s policies require every town trustee to vote on every issue, unless excused by the other town trustees; and that the town’s policies treat an “abstention” as a “yes” vote.

31. The town’s policies were not made a part of the record.

32. Mr. Ricotta testified that when he asked what he should do at the December 5, 2016 meeting because Mrs. Ricotta was his wife, Mr. Farringer and the other town trustees told him he was required to vote.

33. It is unclear from the record whether Mr. Ricotta considered the town policy in recusing from the April 3, 2017 vote.

II. Conclusions of Law

a. Jurisdiction

34. Mr. Ricotta is a town trustee and thus, a “local government official” within the meaning of Section 2 of Article XXIX of the Colorado Constitution. The Commission has jurisdiction over Mr. Ricotta pursuant to Section 5(1) of Article XXIX.

35. Mr. Ricotta was subject to the Commission’s jurisdiction at the time of the events in question.

36. Mr. Ricotta is subject to the “standards of conduct” set forth in sections 24-18-109(2)(b) and (3)(a), C.R.S. Colo. Const. art. XXIX § 5(1).

37. The IEC has jurisdiction over ethical “standards of conduct”, which the Colorado Supreme Court has defined as those standards of conduct which “relat[e] to activities that could allow covered individuals to improperly benefit financially from their public employment.” *Gessler v. Smith*, 419 P.3d 964, 975 (Colo. 2018).

38. Allegations under section 24-18-103, C.R.S., that a public official used public employment for improper personal financial gain “fall within the ambit of the IEC’s jurisdiction under article XXIX, section 5.” *Gessler*, 419 P.3d at 972.

a. Section 24-18-109(2)(b), C.R.S.

39. Section 24-18-109(2)(b), C.R.S. provides that a local government official shall not “[p]erform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent”.

40. Violation of any act enumerated in section 24-18-109, C.R.S. constitutes a breach of the public trust. § 24-18-109(a), C.R.S.

41. Although section 24-18-109, C.R.S. imposes criminal liability for proof of violation beyond a reasonable doubt, the IEC applies a preponderance of the evidence standard of proof for ethical violations unless it determines that a higher standard is warranted. Colo. Const. art. XXIX, § 5(3)(e).

42. The IEC finds that a preponderance of the evidence standard is warranted in this case.

43. The IEC finds that, at the time of Mr. Ricotta’s December 5, 2016 vote regarding vacation of the alleyway in Blocks 4 and 5, Mr. Ricotta was a “representative[] or agent” for the Brotherhood of the 74 within the meaning of section 24-18-109(2)(b). Mr. Ricotta was the president of the Brotherhood of the 74. Mr. Ricotta signed the written lot line vacation requests to the town of Williamsburg on behalf of the Brotherhood of the 74. He was clearly acting on behalf of that organization.

44. The IEC finds that Mr. Ricotta’s December 5, 2016 vote regarding vacation of the alleyway was “an official act.” The statute defines “official act” as “any vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.” § 24-18-102(7), C.R.S.

45. The IEC finds that Mr. Ricotta's vote directly and substantially affected the Brotherhood of the 74 to its economic benefit. Vacation of the alleyway increased the property's value by removing an encumbrance thereon. Mr. Ricotta testified at hearing that the Brotherhood of the 74 did not need the alleyway vacation to build its clubhouse, but, as demonstrated by the Duncans' request, vacation of the alleyway improved the development potential of the parcel.

46. Accordingly, the IEC finds that Mr. Ricotta violated section 24-18-109(2)(b), C.R.S.

47. The IEC finds that the testimony regarding the town of Williamsburg's policy—that every town trustee must vote on every matter—is mitigating but not determinative. First, that policy was not submitted into the record. Second, state law preempts town ordinances and/or policies where a local law conflicts with state law, and state law requires local government officials to recuse themselves where certain conflicts of interest exist. *See generally* § 24-18-109, C.R.S.; *Town of Frederick v. North Am. Res. Co.*, 60 P.3d 758 (Colo. App. 2002). The town of Williamsburg's policy, to the extent it conflicts with state law, is likely unlawful. Finally, while the IEC is sympathetic that Mr. Ricotta received bad advice from Mr. Farringer and his fellow trustees, such advice is not a defense to the statutory violation. At a minimum, Mr. Ricotta or the town council should have consulted the town's legal counsel before proceeding.

48. The Constitution requires the IEC to impose a penalty “for double the amount of the financial equivalent of any benefits obtained by [Respondent's] actions”. Colo. Const. art. XXIX, § 6.

49. No evidence was presented at hearing regarding the financial value of vacation of the alleyway. Accordingly, the IEC finds that no monetary penalty is appropriate for Mr. Ricotta's violation of section 24-18-109(2)(b), C.R.S.

b. Section 24-18-109(3)(a), C.R.S.

50. Section 24-18-109(3)(a), C.R.S., provides that a local government official “who has a personal or private interest in any manner proposed or pending before the government body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.”

51. The IEC finds that Mr. Ricotta had a “personal or private interest” in the retention of Mrs. Ricotta as town clerk. Mr. Ricotta testified that he had been married to Mrs. Ricotta for 35 years. Mr. Ricotta further testified that the couple had combined their finances. The nature of the Ricottas’ relationship alone is sufficient to demonstrate that Mr. Ricotta had a “personal or private interest” in her continued employment.

52. It was undisputed that, by voting for retention of all town employees at the December 5, 2016 meeting, Mr. Ricotta was voting to retain his wife as town clerk. While Mr. Ricotta’s relationship to Mrs. Ricotta was self-evident and did not require additional disclosure during the meeting, Mr. Ricotta should not have voted on the matter.

53. The IEC finds, however, that Mr. Ricotta’s vote to give town employees a \$400.00 bonus when that bonus had already been approved at a previous meeting prior to Mr. Ricotta’s tenure as town trustee does not constitute a violation of section 24-18-109(2)(b), C.R.S. The town had already taken official action, and Mr. Ricotta’s vote had no effect.

54. No evidence was presented at hearing regarding the financial value of retention of Mrs. Ricotta, and Mr. Ricotta’s vote was not determinative. Accordingly, the IEC finds that no monetary penalty is appropriate for Mr. Ricotta’s violation of section 24-18-109(3)(a), C.R.S.

THEREFORE, the Commission finds by a preponderance of the evidence that Mr. Ricotta violated sections 24-18-109(2)(b) and 24-18-109(3)(a), C.R.S. The Commission finds that no penalty is warranted.

The Independent Ethics Commission

April Jones, *Chair, concurring in part and dissenting in part*

Jo Ann Sorensen, *Vice-Chair*

William Leone, *Commissioner*

Matt Smith, *Commissioner*

DATED: April 22, 2019

Commissioner April Jones, CONCURRING IN PART AND DISSENTING IN PART.

I concur with the Commission’s finding that Mr. Ricotta violated section 24-18-109(3)(a), C.R.S. by voting to retain his wife, Lucinda Ricotta, as the town clerk. However, I

dissent insofar as the Commission finds a violation of section 24-18-109(2)(b), C.R.S., for Mr. Ricotta's December 5, 2016 vote regarding vacation of the alleyway.

I agree that Mr. Ricotta's vote constitutes an "official act" within the meaning of section 24-18-109(2)(b), C.R.S. I also agree that Mr. Ricotta was either a "representative" or "agent" of the Brotherhood of the 74 within the meaning of that provision. However, to find a violation, the statute requires that Mr. Ricotta's vote "directly and substantially affect[] to its economic benefit" the Brotherhood of the 74. § 24-18-109(2)(b), C.R.S. I do not believe that the benefit obtained by the Brotherhood of the 74 in this instance rises to a direct and substantial economic benefit.

The evidence demonstrates that the Brotherhood of the 74 had already built its clubhouse or meeting house on its property prior to vacation of the alleyway, and therefore did not have the same interest in its vacation as did the Duncans. There was testimony to the effect that vacation of the alleyway did not increase its property value in any measurable or tangible way. It seems undisputed that vacation of the alleyway, by uniting the Brotherhood of the 74's Lots 4 through 10 with Lots 11 through 17, tangentially increased the value of the property. But there is no evidence in the record that such benefit was either "direct" or "substantial". It was not direct in that the Brotherhood of the 74 did not receive any immediate or tangible benefit from vacation of the alleyway. And it was not substantial, because there was no proof that vacation of the alleyway resulted in a considerable increase in value of the Brotherhood of the 74's property. Given the evidence before the Commission, I cannot agree that Mr. Ricotta's conduct satisfied the standard necessary to find a violation of section 24-18-109(2)(b), C.R.S.

EXHIBIT X

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

Findings and Conclusions, Compl. 18-08

COLORADO INDEPENDENT ETHICS COMMISSION

Complaint No. 18-08

FINDINGS OF FACT AND CONCLUSIONS OF LAW

IN THE MATTER OF: JULIE COZAD

This matter comes before the Independent Ethics Commission (“Commission”) on a complaint filed by Charles Parks, Jr. (“Complainant”) against Julie Cozad, a county commissioner for Weld County, Colorado. Complainant alleged violations of §§ 24-18-109 and 18-8-308, C.R.S., for Commissioner Cozad’s vote on an item regarding which she had an alleged conflict of interest on March 7, 2018. In its Notice of Issues for Hearing, the Commission set forth the issues for hearing, which included an alleged conflict of interest under section 24-18-109(3)(a), C.R.S., and breach of the public trust under section 24-18-103, C.R.S., over which the Commission has jurisdiction pursuant to section 5(1) of Article XXIX of the Colorado Constitution.

On April 22, 2019, the Commission held an evidentiary hearing and deliberated on the merits of the case in public. The Commission has determined that Ms. Cozad violated section 24-18-109(3)(a), C.R.S., when she voted on a matter in which she had a personal or private interest. Specifically, by voting in favor of a consent agenda which included a warrant payment to herself for payment of \$12,268.57 in legal fees that she incurred defending a separate ethics complaint before this Commission, Ms. Cozad breached her fiduciary duty and the public trust. The Commission finds that no penalty should be imposed pursuant to section 6 of Article XXIX of the Colorado Constitution.

I. Findings of Fact

1. At an October 2017 Weld County Board of Commissioners work session, Ms. Cozad requested that Weld County hire outside counsel to represent her in defending Complaint 17-28, an ethics complaint filed with this Commission in July 2017 that is currently stayed for reasons unrelated to the instant complaint.

2. Ms. Cozad had been informed by the Weld County attorney, Bruce Barker, that he could not represent her because he would be representing the county's interests in Complaint 17-28 by briefing the jurisdictional issue of whether Weld County is exempt from the requirements of Article XXIX as a home rule entity. Colo. Const. art. XXIX, sec. 7.

3. Ms. Cozad's request for the county to cover her legal fees was limited to briefing of the jurisdiction issue, not the substantive allegations against her.

4. Because one commissioner, Sean Conway, opposed Ms. Cozad's request, she withdrew that request and proceeded to hire legal counsel on her own.

5. On October 31, 2017, Ms. Cozad retained Jason Dunn of Brownstein Hyatt Farber Schreck, LLP ("Brownstein") to represent her.

6. Ms. Cozad terminated her retention of Mr. Dunn's legal services after this Commission asserted jurisdiction over Complaint 17-28 on February 12, 2018.

7. Ms. Cozad paid a total of \$12,268.57 in legal fees to Brownstein, all of which were paid by personal check.

8. In or about February 2018, Ms. Cozad approached the Weld County attorney again and showed him the Brownstein invoices she had received and paid.

9. Ms. Cozad testified that Mr. Barker agreed that Weld County should cover her attorney's fees for litigation of the home rule issue.

10. At a February 26, 2018 work session of the Weld County Board of Commissioners, Mr. Barker requested that the Board pay for Ms. Cozad's legal fees incurred during Brownstein's representation.

11. Ms. Cozad left the room and went to her office during the portion of the work session at which her legal fees were discussed, and Mr. Barker came to her office afterwards to tell her that the Board had agreed to pay for her legal fees.

12. Ms. Cozad stated that it was her understanding the Board would have to vote on such payment at a regularly scheduled meeting.

13. The regular procedure for reimbursement of expenses incurred by commissioners on behalf of Weld County was to fill out a reimbursement form.

14. Ms. Cozad did not fill out a reimbursement form, but did provide the Brownstein invoices and copies of her personal checks to Mr. Barker.

15. The payment of Ms. Cozad's legal fees was placed on the consent agenda for the March 7, 2018 Weld County Board of Commissioners meeting.

16. The agenda for that meeting included a "Warrant Register.",

17. The Warrant Register catalogs a check made out to "Julie Ann Cozad" in the amount of \$12,268.57

18. Ms. Cozad received the Warrant Register the evening prior to the March 7, 2018 meeting.

19. Ms. Cozad stated she did not review the Warrant Register portion of the consent agenda prior to the March 7, 2018 meeting.

20. The Warrant Register is signed by Ms. Cozad and the other commissioners who were in attendance at the March 7, 2018 meeting.

21. The minutes of the March 7, 2018 meeting reflect that the consent agenda, including approval of the payments set forth on the Warrant Register, was approved unanimously.

22. Ms. Cozad did not recuse herself from voting on the consent agenda.

23. The Weld County Board of Commissioners has a procedure for removing an item from the consent agenda and voting on that item as a standalone agenda item, and that procedure is triggered by any commissioner's request to vote on an item separately.

24. Ms. Cozad did not request that payment of her legal fees be removed from the consent agenda and voted on as a standalone agenda item.

25. Ms. Cozad testified that she received a check from Weld County in the amount of \$12,268.57 sometime after the March 7, 2018 Weld County Board of Commissioners meeting.

26. On September 26, 2018, the Weld County Board of Commissioners voted 3-1 (with Ms. Cozad recused) in favor of passing a resolution to "reapprove and confirm [the] reimbursement of legal expenses in the amount of \$12,268.57 to Commissioner Julie A. Cozad by and through Weld County warrant number 3331998 on March 7, 2018."

27. At the time of the September 26, 2018 resolution, Ms. Cozad had already been paid the amount of \$12,268.57 by Weld County.

II. Conclusions of Law

a. Jurisdiction

1. Ms. Cozad is a county commissioner and thus, a “local government official” within the meaning of Section 2 of Article XXIX of the Colorado Constitution.

2. On or about November 7, 2017, the Weld County voters approved Ballot Question 1B, which became Section 16-9 of the Weld County Charter.

3. That provision provided that, regardless of Weld County’s status as a home rule entity, all elected officers and employees of Weld County were subject to Article XXIX of the Colorado Constitution.

4. In her jurisdictional brief, filed on December 6, 2018, Ms. Cozad conceded that Ballot Question 1B was intended to, and did, cede jurisdiction over ethics matters to this Commission.

5. Accordingly, Ms. Cozad was subject to the Commission’s jurisdiction at the time of the events in question.

6. Ms. Cozad is subject to the “standards of conduct” set forth in sections 24-18-109(3)(a) and 24-18-103, C.R.S. Colo. Const. art. XXIX § 5(1).

7. The IEC has jurisdiction over ethical “standards of conduct”, including those set forth in Article 18 of Title 24. *Gessler v. Smith*, 419 P.3d 964, 975 (Colo. 2018).

b. Section 24-18-109(3)(a), C.R.S.

8. Section 24-18-109(3)(a), C.R.S., provides that a local government official “who has a personal or private interest in any manner proposed or pending before the government body shall disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.”

9. The IEC finds that Ms. Cozad had a “personal or private interest” in the payment of her legal fees. Regardless of whether those fees are characterized as a “reimbursement”, the underlying ethics complaint, Complaint 17-28, was filed against Ms. Cozad, not Weld County. She selected the firm and attorney to represent her, and signed the representation agreement. She received and paid Brownstein’s invoices, which were in her name alone. The practical effect of the County’s vote to pay for her legal fees was that Ms. Cozad received \$12,268.57 in funds that she would not have otherwise received. She certainly had a particularized pecuniary interest in Weld County’s payment of that amount. *See Russell v. Wheeler*, 439 P.2d 46, 47 (Colo. 1968).

10. The IEC finds that Ms. Cozad voted on the matter in which she had a personal or private interest by voting to approve the consent agenda at the March 7, 2018 meeting.

11. Ms. Cozad's failure to read the Warrant Register on the consent agenda is not a mitigating factor since she knew that approval of her legal expenses would need to occur at a regularly scheduled meeting and knew that the Board had discussed such payment at its most recent work session.

12. The fact that Weld County later passed a resolution to "reapprove and confirm" payment of Ms. Cozad's legal expenses did not cancel out her earlier vote. Ms. Cozad had already voted on a matter in which she had a personal or private interest, and it is that conflict of interest that constitutes an ethical violation. While Weld County may have intended that the resolution "substitute[] for and take[] the place of" its earlier action, it could not retroactively cure Ms. Cozad's statutory violation.

13. The IEC makes no findings regarding the propriety of Weld County's decision to reimburse Ms. Cozad's legal fees. The IEC is concerned only with Ms. Cozad's failure to recuse herself from voting to pay herself \$12,268.57. That vote, which was on a matter in which she had a personal or private interest, violated section 24-18-109(3)(a), C.R.S.

c. Section 24-18-103, C.R.S.

14. Section 24-18-103, C.R.S. provides that local government officials "shall carry out [their] duties for the benefit of the people of the state" because the holding of public office is a public trust. *Id.* A local government official whose conduct departs from her fiduciary duty is liable to the people of the state as a trustee of property and shall be liable for abuse of the public trust. *Id.*

15. Section 24-18-103, C.R.S., "establishes an ethical standard of conduct subject to the IEC's jurisdiction." *Gessler*, 419 P.3d at 967.

16. Because the Commission finds a violation of section 24-18-109(3)(a), C.R.S., the Commission declines to find a separate violation of section 24-18-103 for the same conduct.

d. Penalty

17. The IEC finds that no monetary penalty is appropriate for Ms. Cozad's violation of section 24-18-109(3)(a), C.R.S. First, section 24-18-109(3)(a) does not mandate a specific penalty. Nevertheless, the Colorado Constitution requires additional analysis because it requires that any local government official who breaches the public trust for private gain shall be

liable to the state or local jurisdiction for double the amount of the financial equivalent of any benefits obtained by such actions. Colo. Const. art. XXIX, § 6. For the IEC to impose a penalty under this requirement, Ms. Cozad's actions must have both: (1) constituted a breach of the public trust for private gain; and (2) resulted in a benefit that was "obtained by such actions." *Id.* A violation of section 24-18-109(3)(a) undoubtedly constitutes a breach of one's fiduciary duty and the public trust. § 24-18-109(1), C.R.S. However, there is no indication that the benefit Ms. Cozad received here—payment of her legal fees—was obtained by her actions. Given Weld County's ratification of this payment and its steadfast position that this payment was ultimately made to defend the County's view of the home rule jurisdiction issue, we cannot find that Ms. Cozad's action in voting on the consent agenda resulted in her receiving payment of her legal fees. In short, there is an insufficient causal relationship between Ms. Cozad's breach of trust and the payment of her legal fees.

THEREFORE, the Commission finds, by a preponderance of the evidence that Ms. Cozad violated section 24-18-109(3)(a), C.R.S. The Commission finds that no penalty is warranted.

The Independent Ethics Commission

Elizabeth Espinosa Krupa, *Chair*

April Jones, *Commissioner*

Matt Smith, *Commissioner*

Jo Ann Sorensen, *Commissioner*

DATED: June 24, 2019

EXHIBIT Y

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

Findings and Conclusions, Compl. 11-03

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Colorado Ethics Watch,
Complainant,

v.

J. Kevin McCasky,
Respondent.

On February 6, 2012 and March 19, 2012 the Independent Ethics Commission ("IEC" or "Commission") (Commissioner Hopper recused) conducted a hearing as required by Colorado Constitution Article XXIX, section 5(3)(c) regarding Complaint 11-03 filed with the Commission. The IEC heard argument and received stipulated facts and documentary evidence. All findings are made by a preponderance of the evidence, unless otherwise expressed. Based on the Commission's investigation and the evidence received at the hearing, the Commission finds as follows:

Findings of Fact

1. J. Kevin McCasky served as a Jefferson County Commissioner from January 2005 through January 2011.
2. On November 2, 2010, Mr. McCasky applied for a position as Executive Director of the Jefferson Economic Council ("JEC"), by sending his resume to a consulting firm, Jorgensen Consulting.
3. JEC is supported in part by contributions from Jefferson County. In 2010 Jefferson County contributed \$380,000 to JEC.
4. Mr. McCasky has been a supporter of JEC and has urged an increase in Jefferson County's contribution to JEC for several years.
5. On November 4, 2010, the Jefferson County Board of Commissioners was briefed by staff on the proposed budget for 2011. At that meeting Commissioner Hartman proposed increasing the contribution to the JEC to \$400,000.
6. On December 6, 2010, Jorgensen Consulting narrowed the list of applicants to four candidates including Mr. McCasky for the position

of JEC Executive Director. Mr. McCasky was informed of this by telephone on December 8, 2010.

7. On December 7, 2010, the Jefferson County Board of Commissioners formally approved the budget for 2011. Commissioner Griffin moved the resolution detailing the contributions for 31 separate entities. The resolution included an increase from \$380,000 to \$400,000 to the JEC. Mr. McCasky seconded the motion, and the motion passed 3-0.
8. At the time of the vote, Mr. McCasky had not publicly disclosed that he had applied for the position with JEC, although both Commissioners Griffin and Hartman were aware of his application.
9. On December 15, 2010, Mr. McCasky was interviewed for the position of Executive Director of JEC. He was interviewed again on January 7, 2011, and offered the job on January 11, 2011.

Conclusions of Law

A. Colorado Constitution Article XXIX, Section 3(2)

Section 3(2) of Article XXIX provides:

No public officer, member of the general assembly, local government official, or government employee either directly or indirectly as the beneficiary of a gift or thing of value given to such person's spouse or dependent child, shall solicit, accept or receive any gift or thing of value having either a fair market value or aggregate actual cost greater than fifty dollars (\$50) in any calendar year, including but not limited to...**promises or negotiations of future employment** ...from a person without such person receiving lawful consideration of equal or greater value in return from the public officer, member of the general assembly, local government official, or government employee who solicited, accepted or received the gift or other thing of value. (emphasis added).

After reviewing the relevant facts and law, the Commission finds:

1. Mr. McCasky was a "local government official" as defined by Colorado Constitution Article XXIX section 2(3), and was subject to the Commission's jurisdiction at the time of the events in question.
2. Under the circumstances of this case, submission of an application for future employment without anything in addition does not amount

to “promises or negotiations of future employment” as that term is used in the Constitution.

3. For this reason, Mr. McCasky did not accept a prohibited gift of future employment under Article XXIX, section 3(2).

B. Colorado Revised Statutes §24-18-109(2):

Colorado Revised Statutes §24-18-109(2)(b) provides that a local government official shall not:

Perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a **substantial financial interest** or is engaged as counsel, consultant, representative, or agent. (emphasis added)

C.R.S §24-18-102(4)(c) defines a financial interest to include a substantial interest held by an individual which is “employment or prospective employment for which negotiations have begun.” Unlike the Constitution, C.R.S. §24-18-102(4) defines financial interest to include “prospective employment for which negotiations *have begun*”.

After reviewing the facts and the law, the Commission finds that:

1. Mr. McCasky took official action regarding JEC by voting on the increased contribution by Jefferson County to the JEC.
2. The increased contribution substantially affected JEC to its economic benefit.
3. Negotiations for prospective employment began when Mr. McCasky submitted his resume to JEC in November 2010.
4. For these reasons, the Commission finds 2-1 (Commissioner Smith dissenting on finding 2, above) that Mr. McCasky violated C.R.S. §24-18-109(2).

C. Colorado Revised Statutes § 24-18-109(3)(a)

Colorado Revised Statutes §24-18-109(3)(a) provides:

A member of the governing body of a local government who has a personal or private interest in any matter proposed or pending before the governing body shall

disclose such interest to the governing body and shall not vote thereon and shall refrain from attempting to influence the decisions of the other members of the governing body in voting on the matter.

After reviewing the facts and the law, the Commission finds that:

1. Mr. McCasky, while serving as a member of the governing body of a local government, did not publicly disclose to the Jefferson County Board of County Commissioners that he had submitted a resume to JEC.
2. Mr. McCasky had a personal or private interest in the vote on the JEC's budget as evidenced by his submission of a resume to the JEC for prospective employment.
3. Mr. McCasky seconded and voted on the increased contribution.
4. For these reasons, the Commission (3-0), finds based on the law and the facts, that Mr. McCasky violated C.R.S. §24-18-109(3)(a).
5. The Commission rejects Respondent's arguments that the Commission should not consider a violation of C.R.S. section 24-18-109(3)(a) either on due process or statute of limitations grounds because: 1) the complaint specifically alleges violation of C.R.S. §24-18-109; 2) the violation of subsection (3)(a) is premised on the same facts set forth in the complaint; 3) the Commission provided Respondent with the opportunity to provide additional briefing and additional factual development; and 4) there is no harm to the parties.

The Commission finds that no penalty is warranted in this case.

The Independent Ethics Commission

Dan Grossman, *Chair*
Bill Pinkham, *Commissioner*
Matt Smith, *Commissioner* (dissenting in part)

Commissioner Hopper recused.
March 21, 2012

CERTIFICATE OF MAILING

This is to certify that on the 22nd day of March, 2012, I emailed copies of the foregoing **FINDINGS OF FACT AND CONCLUSIONS OF LAW** addressed as follows:

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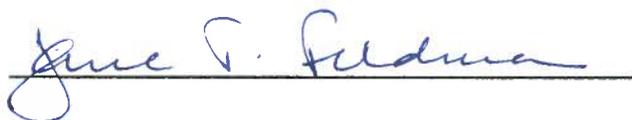


EXHIBIT Z

Mayor Dunafon's Consolidated Response
to Complaint Nos. 16-02 & 17-14

Findings and Conclusions, Compl. 17-25

COLORADO INDEPENDENT ETHICS COMMISSION

Complaint No. 17-25

FINDINGS OF FACT AND CONCLUSIONS OF LAW

IN THE MATTER OF: LUCINDA RICOTTA

This matter comes before the Independent Ethics Commission (“Commission”) on a complaint filed by Stephen Harrison, Eva Mares, Ronald Mares, Steven Gardner, Donna Drautheim, Joshua Baker, and Shane Espinoza (“Complainants”)¹ against Lucinda Ricotta, town clerk for the town of Williamsburg, Colorado. Complainants alleged various ethical violations surrounding Mrs. Ricotta’s actions as a town trustee. In its Notice of Issues for Hearing, the Commission narrowed the issues for hearing to alleged conflicts of interest under section 24-18-109(2)(b) and alleged breach of the public trust under section 24-18-103, C.R.S., for failure to carry out one’s duties pursuant to §§ 31-4-110 and 31-4-305, C.R.S. The Commission has jurisdiction to enforce ethical standards of conduct pursuant to section 5(1) of Article XXIX of the Colorado Constitution.

On March 18, 2019, the Commission held an evidentiary hearing and deliberated on the merits of the case in public. For the reasons set forth below, the Commission has determined that Mrs. Ricotta’s actions in carrying out her duties as town clerk do not constitute violations of sections 24-18-109(2)(b) and 24-18-103, C.R.S.

I. Findings of Fact

1. Mrs. Ricotta testified that she had been town clerk of Williamsburg for about 10 years. She testified that she had not received formal training.
2. Mrs. Ricotta was, at all times relevant to the complaint, married to Steve Ricotta, who was elected as a town trustee of Williamsburg in November 2016.
3. Steve Ricotta was, at all times relevant to the complaint, president of the Royal Gorge Chapter of the Brotherhood of the 74, a motorcycle-riding organization.

¹ Mr. Espinoza, Ms. Krautheim, and Mr. Baker later withdrew from participating in the complaint process or did not participate in the process.

4. Mrs. Ricotta was not a member of Brotherhood of the 74.
5. On April 25, 2016, property owners Donna and Jack Duncan filed a written request with the town of Williamsburg to vacate a public alleyway located in block 4 of the “Colorado Fuel and Iron Co.” addition to Williamsburg.
6. That alleyway bisected the Duncans’ properties, Lots 3-7 and 11-16 in Block 4.
7. The alleyway, as extended, also bisected Brotherhood of the 74’s properties, Lots 4-10 and 11-20 in Block 5.
8. Mrs. Ricotta testified at hearing that the Duncans’ request was not granted because the mayor at the time believed it was a public right-of-way that could not be vacated.
9. On July 25, 2016, Mrs. Ricotta signed and filed an application for a Zoning and Building Permit on behalf of the Brotherhood of the 74 to construct a “[g]arage” on the Brotherhood of the 74’s properties. The application does not specify the lot, block, or subdivision number.
10. After the permit was issued, the permit was used by the Brotherhood of the 74 to build a structure on its property for use as a clubhouse or meeting place. Mr. Ricotta paid for one-half of the building costs.
11. Mr. Ricotta’s undisputed testimony at hearing was that the property owned by Brotherhood of the 74 belongs to the national chapter of that organization, which has about 175 members.
12. On November 14, 2016, Mr. Ricotta emailed a request to Mrs. Ricotta, in her capacity as town clerk, for vacation of the lot lines of Lots 4-10 and 11-20 in Block 5, in order to create one parcel of the Brotherhood of the 74’s properties.
13. On November 15, 2016, Mrs. Ricotta recorded a document with the Fremont County Clerk and Recorder, representing that the town of Williamsburg “has approved the vacation of alleyway of block 4 and 5 of Colorado Fuel and Iron CO’s addition to Williamsburg. For further use and development of property owners located within those blocks [sic].”
14. Mrs. Ricotta included in the document a typewritten signature that the document had been signed by “Jerry Farringer, Mayor”.
15. Mr. Farringer had not yet been sworn in as the mayor of Williamsburg and had not given Mrs. Ricotta approval to sign the document on his behalf. The town of Williamsburg had not approved vacation of the alleyway.

16. Mrs. Ricotta testified that she had paid for recording of the document—around \$22.00—with her own money, and that she did not request reimbursement.

17. On November 22, 2016, the Duncans again filed a written request for vacation of the alleyway on Block 4.

18. At a December 5, 2016 meeting of the town of Williamsburg, the new town trustees, including Mr. Ricotta, and Jerry Farringer, the new mayor, were sworn into office.

19. At the December 5, 2016 meeting, the town trustees—including Mr. Ricotta—voted to approve vacation of the alleyway, including the alleyway’s extension through the properties of the Brotherhood of the 74..

20. The minutes of the December 5, 2016 meeting read, “A [w]ritten submission by Donna Duncan to vacate alleyway of block 4 on Pikeview and The Brotherhood of the 74 request the same for block 5. A motion was made by Billy Jack to vacate the 10 foot alleyway easement between east and west lots. Seconded by Forrest. Roll Call: 7 yes, 0 no, 0 abstain and 0 absent. Motion carried.”

21. On December 6, 2016, Mrs. Ricotta recorded a document with the Fremont County Clerk and Recorder, again representing that the town of Williamsburg had approved vacation of the alleyway of blocks 4 and 5.

22. On February 22, 2017, the Williamsburg town attorney advised Mrs. Ricotta that, in order to vacate an alleyway, the town must pass an ordinance pursuant to section 43-2-303(1)(a), C.R.S.

23. At the March 6, 2017 meeting of the town of Williamsburg, the town trustees did a “first read” of an ordinance to vacate the alleyway on Blocks 4 and 5.

24. At the April 3, 2017 meeting of the town of Williamsburg, the town trustees voted to pass an ordinance vacating the alleyway on Blocks 4 and 5, with Mr. Ricotta abstaining.

25. Mrs. Ricotta recorded the ordinance with the Fremont County Clerk and Recorder on April 13, 2016.

II. Conclusions of Law

a. Jurisdiction

26. Mrs. Ricotta is the town clerk for Williamsburg and thus, a “government employee” within the meaning of Section 2 of Article XXIX. The Commission has jurisdiction over Mrs. Ricotta pursuant to Section 5(1) of Article XXIX.

27. Mrs. Ricotta was subject to the Commission’s jurisdiction at the time of the events in question.

28. Mrs. Ricotta is subject to the “standards of conduct” set forth in sections 24-18-109(2)(b) and 24-18-103, C.R.S. Colo. Const. art. XXIX § 5(1).

29. The IEC has jurisdiction over ethical “standards of conduct”, which the Colorado Supreme Court has defined as those standards of conduct which “relat[e] to activities that could allow covered individuals to improperly benefit financially from their public employment.” *Gessler v. Smith*, 419 P.3d 964, 975 (Colo. 2018).

30. Allegations under section 24-18-103, C.R.S. that a public official used public employment for improper personal financial gain “fall within the ambit of the IEC’s jurisdiction under article XXIX, section 5.” *Gessler*, 419 P.3d at 972.

a. Section 24-18-109(2)(b), C.R.S.

31. Section 24-18-109(2)(b), C.R.S. provides that a local government official shall not “[p]erform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent”.

32. Violation of any act enumerated in section 24-18-109, C.R.S. constitutes a breach of the public trust. § 24-18-109(a), C.R.S.

33. Although section 24-18-109, C.R.S. imposes criminal liability for proof of violation beyond a reasonable doubt, the IEC applies a preponderance of the evidence standard of proof for ethical violations unless it determines that a higher standard is warranted. Colo. Const. art. XXIX, § 5(3)(e).

34. The IEC finds that a preponderance of the evidence standard is warranted in this case.

35. The IEC finds that Mrs. Ricotta did not have a “substantial financial interest” in the Brotherhood of the 74 at the time she recorded vacation of the alleyway in Blocks 4 and 5 in November 2016 without authorization.

36. The IEC also finds that Mrs. Ricotta was not “engaged as counsel, consultant, representative or agent” for the Brotherhood of the 74 in November 2016. Although Mrs. Ricotta had filed a building permit on behalf of the Brotherhood of the 74 earlier that year, there

was no evidence presented at hearing that she was a representative or agent for the organization on an ongoing basis.

37. Because Mrs. Ricotta did not have a substantial financial interest in, and was not a representative or agent of, the Brotherhood of the 74, the IEC need not consider whether her actions in recording the vacation of the alleyway without authorization constituted an “official act” within the meaning of section 24-18-102, C.R.S.

38. Accordingly, the IEC finds that Mrs. Ricotta’s actions in recording the vacation of the alleyway on November 15, 2016 do not constitute a violation of section 24-18-109(2)(b), C.R.S.

b. Section 24-18-103, C.R.S.

39. Section 24-18-103, C.R.S. provides that public employment “is a public trust” and that government employees “shall carry out [their] duties for the benefit of the people of the state.” *Id.*; *see also Gessler*, 419 P.3d at 972.

40. Sections 31-4-110 and 31-4-305, C.R.S., set forth the duties of a city (or town) clerk, including the requirement of affixing the city seal to all documents authenticated by the city and the duty to make a true and accurate record of all proceedings and actions by a board of trustees.

41. Mrs. Ricotta’s actions in recording vacation of the alleyway on November 15, 2016 certainly constitute a poor performance of her duties as town clerk. But the Commission does not believe they rise to the level of a breach of public trust sufficient to constitute an ethics violation. *Cf.*, *Gessler*, 419 P.3d at 972. Mrs. Ricotta testified that she was attempting to complete a task efficiently, and failed to get the proper authorization to do so. While the IEC views that explanation with skepticism, given the timing of Mr. Ricotta’s written request for line vacation and the timing of the recording, Mrs. Ricotta’s testimony went uncontroverted at hearing. Further, the IEC’s constitutional mandate and jurisdiction do not include ensuring that local government employees perform their job duties correctly. Unless a miscarriage of those duties constitutes a breach of public trust, *see Gessler*, 419 P.3d at 972, the IEC will not find a statutory violation.

42. Mrs. Ricotta also recorded a vacation of the alleyway on December 6, 2016, which turned out to be invalid. However, at that time, Mrs. Ricotta was acting with the

authorization of and pursuant to the direction of the town trustees, and her actions do not constitute a breach of the public trust.

43. Accordingly, the IEC finds that Mrs. Ricotta's actions in recording vacation of the alleyway on November 15, 2016 and December 6, 2016 do not constitute a violation of section 24-18-103, C.R.S.

THEREFORE, the Commission finds there was no violation of any ethical standard of conduct by Respondent Lucinda Ricotta, and dismisses Complaint 17-25.

The Independent Ethics Commission

April Jones, Chair, voting to find no ethical violations at the Commission's March 18, 2019, meeting, but not participating in adoption of the written opinion

Jo Ann Sorensen, Vice-Chair

William Leone, Commissioner

Matt Smith, Commissioner, dissenting

DATED: April 22, 2019

Commissioner Matt Smith, DISSENTING.

I disagree with the majority and find that the actions of Respondent, Lucinda Ricotta, were a conflict of interest with her duties as measured by the standards of section 24-18-109(2)(b) and that she breached the public trust standards under section 24-18-103, C.R.S., for failure to carry out her duties pursuant to §§ 31-4-110 and 31-4-305, C.R.S. Having similar parties and similar facts, Complaints 17-25 and 17-31 were heard together. My rationale for finding an ethical violation in this case against the Respondent, Lucinda Ricotta, pursuant to the section 24-18-109(2)(b) standards is similar to the findings made by the majority against Respondent, Steve Ricotta, in Complaint 17-31. I will highlight additional facts and rationale to support my conclusion on the conflict of interest standard, before moving on to the breach of trust standard.

As an employee and Town Clerk, Lucinda was a governmental employee pursuant to Colo. Const. Art. XXIX, Section 2(1). (Stipulation 4). On November 15, 2015, she prepared and filed two documents (Reception #944789 and Reception #944789) (Exhibit J) with the Fremont

County Clerk and Recorder. Although neither document was signed, the documents were prepared, delivered, and filed by Lucinda Ricotta with the Town Seal applied by Lucinda Ricotta. The delivery, filing and application of the Town Seal prior to any vote or authorization by the Trustees of the Town of Williamsburg were official acts.

While Mr. Ricotta argues that the Brotherhood of the 74 never asked for an alleyway vacation, requesting instead lot line adjustments, the expectation was that the alleyway for the Brotherhood of the 74, Lots 4-20, Block 5, Colorado Fuel and Iron Company Addition, Town of Williamsburg, Colorado would be vacated. Lucinda Ricotta admits that a prior request from Donna Duncan to vacate the same alleyway for Block 4, Exhibit H, also bears Lucinda Ricotta's hand-written notes that it could not be done because it contained a public right of way. Both Lots 4 and 5 had public alleyways, and Lucinda Ricotta had notice that vacation of the alleyways would require more than a clerical act.

Lucinda Ricotta is not a member or officer of the Brotherhood of the 74. However, on July 25, 2016 she did complete an Application for Building and Zoning Permit for the Brotherhood of the 74, executing the document "Lucinda Ricotta for Steve Ricotta." (Stipulation 6 and Exhibit F). On its face, the document may not convey sufficient information as to her capacity to act as an agent for the Brotherhood of the 74. However, Lucinda Ricotta responded at the hearing to direct questioning about the application to the effect that this is a small town and that's how things get done. At least in Williamsburg, I must conclude that Lucinda Ricotta has the "apparent authority" to act as an "agent" on the behalf of the Brotherhood of the 74.

I concur with the findings of the majority in Complaint 17-31 that the vacation of the alleyway was a substantial economic benefit to the Brotherhood of the 74. I view the official actions taken by Lucinda Ricotta, prior to approval and authorization, were an act substantially affecting a business or undertaking in which she was engaged as an agent.

Despite the cautions of the majority that we do not want to apply ethical standards to mere mistakes made in office, §24-18-103(1), C.R.S., requires that a . . . "public officer, member of the general assembly, local government official, or employee shall carry out his duties for the benefit of the people of the state." The application of the town seal is an official act authorized by §31-4-110 (2), C.R.S. to be relied upon by other government agencies and the public. Its mere application sends the message that this is an act of government. The seal is not a personal tool to be applied whenever a City Clerk desires, especially when its use is not authorized or

would benefit an organization in which the Clerk has previously acted as agent. Likewise, the City Clerk is tasked with maintaining “true and accurate” records pursuant to §31-4-105, C.R.S. I find that Lucinda Ricotta violated the public trust by preparing, delivering, and filing Exhibit J with the Town Seal on November 15, 2015.